

## **EXHIBIT B**

**In The Matter Of:**

*Hodell-Natco Industries, Inc. v.  
SAP America, Inc., et al.*

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*Otto Reidl*

*Vol. 1*

*February 7, 2012*

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Hodell-Natco Industries, Inc. v.  
SAP America, Inc., et al.

Otto Reidl - Vol. 1  
February 7, 2012

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION  
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5 HODELL-NATCO ) Case No. 1:08 CV 2755  
6 INDUSTRIES, INC., )  
7 Plaintiff, ) Judge: Lesley Wells  
8 vs. ) Magistrate Judge:  
9 ) Greg White  
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Page 4

1 OTTO REIDL,  
2 called as a witness herein, having been first duly  
3 sworn, as hereinafter certified, was examined and  
4 testified as follows:  
5 DIRECT EXAMINATION OF OTTO REIDL  
6 BY MR. STAR:  
7 Q. Good morning, Mr. Reidl. I  
8 apologize in advance if I continually  
9 mispronounce your name today. Feel free to  
10 correct me. I'm Greg Star. I'm an attorney  
11 on behalf of SAP America and SAP AG, and we're  
12 here today for your deposition as the  
13 corporate designee on behalf of Hodell-Natco.  
14 Have you ever been deposed before, sir?  
15 A. Yes.  
16 Q. How many times?  
17 A. Once.  
18 Q. When was that?  
19 A. Approximately 15 years ago.  
20 Q. All right. Let me go through the  
21 rules for you then, since it's been a while.  
22 I'll be asking you questions. The court  
23 reporter will be taking down what I say and  
24 your answers. It's important that we don't  
25 speak over each other. Is that fair?

Hodell-Natco Industries, Inc. v.  
SAP America, Inc., et al.

Otto Reidl - Vol. 1  
February 7, 2012

<p style="text-align: right;">Page 5</p> <p>1 A. Right.</p> <p>2 Q. Your -- your answers need to be</p> <p>3 in verbal form. The nod of the head is not</p> <p>4 going --</p> <p>5 A. I understand.</p> <p>6 Q. -- to be sufficient. Okay.</p> <p>7 Thank you. If you don't understand a question</p> <p>8 that I ask, because my questions are not</p> <p>9 always perfect, please let me know, and I'll</p> <p>10 be happy to rephrase the question or -- or</p> <p>11 clear up any confusion. Is that fair?</p> <p>12 A. I will do that.</p> <p>13 Q. Okay. The case that you were</p> <p>14 deposited in 15 years ago, what was the subject</p> <p>15 matter of that matter, that case?</p> <p>16 A. It was a fatality in an accident.</p> <p>17 Q. Okay. Not a business dispute</p> <p>18 involving Hodell?</p> <p>19 A. No.</p> <p>20 Q. Okay. Other than this case,</p> <p>21 where Hodell has sued SAP America, SAP AG and</p> <p>22 LSi, has -- has Hodell had any other</p> <p>23 litigation matters where it's been a</p> <p>24 Plaintiff?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 7</p> <p>1 A. It was a family-held organization</p> <p>2 to diversify the assets of that family and</p> <p>3 mine.</p> <p>4 Q. Was there a particular line of</p> <p>5 business that that Rife Corporation was in?</p> <p>6 A. That was -- Hodell was the first</p> <p>7 acquisition.</p> <p>8 Q. Okay. And back in 1983, what was</p> <p>9 Hodell's business?</p> <p>10 A. A manufacturer and distributor of</p> <p>11 chain products.</p> <p>12 Q. Does Hodell still today</p> <p>13 manufacture products, or is it just a</p> <p>14 distributor?</p> <p>15 A. We do some light assembly. We do</p> <p>16 not manufacture the core chain.</p> <p>17 Q. And back in 1983, did you have a</p> <p>18 position with Hodell, once it was acquired by</p> <p>19 the Rife Corporation?</p> <p>20 A. Yes.</p> <p>21 Q. What was your --</p> <p>22 A. I was president of Hodell</p> <p>23 Corporation.</p> <p>24 Q. When Hodell was acquired in 1983,</p> <p>25 was Hodell running any kind of business</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Are there any other present</p> <p>2 lawsuits involving Hodell?</p> <p>3 A. No.</p> <p>4 Q. Either as a Plaintiff or a</p> <p>5 Defendant?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. What is your position with</p> <p>8 Hodell, sir?</p> <p>9 A. I'm the CEO.</p> <p>10 Q. Okay. And can you run for me,</p> <p>11 through for me the -- the brief history of</p> <p>12 Hodell, when the company was formed, what its</p> <p>13 general business is?</p> <p>14 A. Yes. In 1983, the Rife</p> <p>15 Corporation acquired Hodell Chain from</p> <p>16 Monogram Industries.</p> <p>17 Q. And I'll just interrupt, if you</p> <p>18 don't mind. Where -- what was your position</p> <p>19 back in 1983 with the organization?</p> <p>20 A. I was president of the Rife</p> <p>21 Corporation.</p> <p>22 Q. What -- what is the name of it?</p> <p>23 A. Rife, R-I-F-E.</p> <p>24 Q. Okay. And what was the business</p> <p>25 of the Rife Corporation?</p>	<p style="text-align: right;">Page 8</p> <p>1 software application to -- to manage its</p> <p>2 manufacturing or distribution processes?</p> <p>3 A. Not when I took over, but I</p> <p>4 introduced Radio Shack TRS-80 and advised the</p> <p>5 people about modern technology.</p> <p>6 Q. What year was that?</p> <p>7 A. 1983.</p> <p>8 Q. What -- following that</p> <p>9 acquisition in 1983 of this Radio Shack</p> <p>10 computer, what was the next step in</p> <p>11 development of the business software</p> <p>12 application for Hodell's purposes?</p> <p>13 A. We used a program similar to</p> <p>14 Excel, I don't remember the exact software, to</p> <p>15 record data.</p> <p>16 Q. Okay. When was that?</p> <p>17 A. In 1983.</p> <p>18 Q. At some point in time Hodell</p> <p>19 makes a switch to sort of a companywide</p> <p>20 software solution; is that true?</p> <p>21 A. Yes.</p> <p>22 Q. When did that first happen?</p> <p>23 A. It happened either late in eighty</p> <p>24 -- 1983 or '84 with Microdata system.</p> <p>25 Q. And what did the Microdata system</p>

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1 A. We had numerous documents,  
2 marketing brochures, and press releases.  
3 Q. Are you able to identify any of  
4 those documents for me today?  
5 A. I don't have them with me. I  
6 have no documents here.  
7 Q. You didn't bring any documents  
8 with you today?  
9 A. None.  
10 Q. Prior to December 23rd, 2005, did  
11 Hodell meet or speak with anybody that was  
12 actually employed by either SAP America or SAP  
13 AG in connection with its decision to license  
14 Business One?  
15 A. At all times we considered the  
16 business partner as being one in the same.  
17 Q. Okay. I understand that you'll  
18 have a -- that you -- you take the position  
19 here that LSi and Mr. Lowery's company were  
20 working on behalf of SAP America and SAP AG,  
21 correct?  
22 A. Correct.  
23 Q. Okay. But what I'm going to ask  
24 you today, sir, and I'm entitled to get an  
25 answer to, is whether there were any

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1 communications, whether they were written, or  
2 whether they were verbal discussions between  
3 Hodell, and anybody who is actually an SAP  
4 America or SAP AG employee. And I understand  
5 the distinction that you want to raise, and so  
6 if we can have that understanding, I'm  
7 entitled to get the information.  
8 Going back to my question, at any time  
9 prior to December 23rd, 2005, did Hodell have  
10 any communications, written or verbal, with  
11 anybody from SAP America, or SAP AG concerning  
12 the licensing of Business One?  
13 A. Not to my recollection.  
14 Q. Prior to December 23rd, 2005, is  
15 there any particular person who was actually  
16 employed by SAP America, or SAP AG, who -- who  
17 Hodell considers to have been involved in  
18 marketing or selling Business One to Hodell?  
19 A. Could you please repeat that  
20 question?  
21 Q. Sure. Prior to December 23rd,  
22 2005, is there any particular person that was  
23 an actual employee of SAP America or SAP AG  
24 that was involved in the sales or marketing  
25 process of Business One to Hodell?

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1 A. Yes.  
2 MR. LAMBERT: Object, but you can  
3 answer.  
4 BY MR. STAR:  
5 Q. Who was involved, sir?  
6 A. Dan Kraus. We had an email from  
7 Dan Lowery, indicating that he had  
8 communication with Dan Kraus of SAP America  
9 in beginning of November of '03. I'm sorry,  
10 '04.  
11 Q. Okay. Is that the only piece of  
12 evidence that you have that anybody from SAP  
13 America, or SAP AG, was involved in the  
14 process of marketing or selling Business One  
15 to Hodell prior to December 23rd, 2005?  
16 MR. LAMBERT: Objection. Other than  
17 LSi and -- and IBiS guys.  
18 MR. STAR: Well, look. We need to get  
19 that clear. I understand that he has -- as I  
20 explained, I understand that you take this  
21 position that LSi and Mr. Lowery were  
22 operating as our agents, and that's a legal  
23 issue.  
24 MR. LAMBERT: Right.  
25 MR. STAR: But what I'm entitled to

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1 find out today is whether there was anybody  
2 from SAP directly, if we can understand that  
3 distinction.  
4 BY MR. STAR:  
5 Q. And you mentioned Mr. Kraus, and  
6 you understood that he was an SAP employee,  
7 correct?  
8 A. Correct.  
9 Q. Okay. So you have an  
10 understanding of what I'm talking about here.  
11 I'm trying to find out from you, sir, whether  
12 there were any SAP America, or SAP AG, actual  
13 employees, that Hodell communicated with prior  
14 to December 23rd, 2005, okay? With that in  
15 mind, let me just ask the question.  
16 Other than this one communication that you  
17 mentioned, which was an email, I think you said  
18 was forwarded from Mr. Lowery to Hodell,  
19 indicating that Mr. Lowery had spoken with  
20 Mr. Kraus of SAP, is there any person from SAP  
21 America, or SAP AG, that Hodell had direct contact  
22 with about the process of marketing or -- or  
23 purchasing Business One prior to December 23rd,  
24 2005?  
25 A. No, because at all times, we were

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1 aware that SAP Business One was marketed  
2 exclusively through its business partners.  
3 Q. Okay. So to be clear, prior to  
4 December 23rd, 2005, no one from Hodell  
5 actually spoke with an SAP America or SAP AG  
6 employee about Business One, correct?  
7 A. As far as I know --  
8 Q. Okay.  
9 A. -- that is correct.  
10 Q. And prior to December 23rd, 2005,  
11 no one from Hodell actually had a direct  
12 written communication with any person who was  
13 actually employed by SAP America or SAP AG,  
14 correct?  
15 A. I don't know that as a fact.  
16 Q. Referring back to this sentence  
17 in the end of paragraph 12 of the complaint,  
18 concerning efforts by SAP AG and SAP America  
19 to market and sell Business One, what does  
20 Hodell contend that either of those two  
21 entities did directly to market Business One  
22 to Hodell, if anything?  
23 MR. LAMBERT: I just want to clarify --  
24 THE WITNESS: Define directly.  
25 MR. LAMBERT: Yeah.

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1 THE WITNESS: Define directly.  
2 BY MR. STAR:  
3 Q. I'll rephrase the question.  
4 What, if anything, does Hodell contend that SAP  
5 America and SAP AG did to market or sell Business  
6 One to Hodell?  
7 A. They provided literature.  
8 Q. To whom?  
9 A. To the business partner, who  
10 provided it to us.  
11 Q. At any time did SAP America or  
12 SAP AG provide literature about Business One  
13 directly to Hodell?  
14 A. No.  
15 Q. In paragraph 13 of the complaint,  
16 sir, you reference a publication called the  
17 SAP Solution Brief Qualified SAP All-in-One  
18 Partner Solutions. Do you see that?  
19 A. Yes.  
20 Q. Okay. You quote a piece of that  
21 document, but you do not attach that to your  
22 complaint, do you?  
23 A. Pardon me?  
24 Q. You do not attach that document  
25 to your complaint, do you?

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1 A. I don't know for sure.  
2 Q. Okay. You go on in this  
3 paragraph 13 to conclude, thus, SAP's  
4 "partners" are agents of SAP, having assented  
5 to act on behalf of and subject to the control  
6 of SAP.  
7 Is it correct that Hodell presently takes  
8 the view that SAP business partners were the  
9 actual agents of SAP?  
10 MR. LAMBERT: Objection.  
11 BY MR. STAR:  
12 Q. You can answer.  
13 MR. LAMBERT: It's a legal -- agents is  
14 a legal term that was inserted in the  
15 complaint. Obviously if you can testify as to  
16 your layman's understanding of the  
17 relationship between SAP and its business  
18 partners, then you can do so.  
19 THE WITNESS: Could you repeat that  
20 question again, please?  
21 BY MR. STAR:  
22 Q. Sure.  
23 A. I'm sorry.  
24 Q. You agree with me that Hodell  
25 contends in this litigation that LSi was

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1 acting as the "agent" of SAP America and SAP  
2 AG when it was marketing Business One to  
3 Hodell, correct?  
4 A. Correct.  
5 Q. Okay. And what you say here is  
6 that, in paragraph 13, that they're acting --  
7 LSi is acting on behalf of and subject to the  
8 control of the SAP Defendants. Do you see  
9 that?  
10 A. Yes.  
11 Q. What evidence do you have that  
12 LSi was acting on behalf and subject to the  
13 control of SAP?  
14 A. The literature that I mentioned  
15 earlier, that they are one in the same.  
16 They're a team.  
17 Q. And by the literature, you're  
18 talking about the SAP Solution Brief that's  
19 mentioned in this paragraph 13?  
20 A. No, because this references  
21 All-in-One, instead of Business One.  
22 Q. Okay. So what literature are you  
23 referring to?  
24 A. Some of the other exhibits that  
25 we have provided.



<p style="text-align: right;">Page 69</p> <p>1 Business One software?</p> <p>2 A. Emails from LSi and IBiS on their</p> <p>3 business partner relationship.</p> <p>4 Q. Anything other than that?</p> <p>5 A. No.</p> <p>6 Q. Okay. Off the record.</p> <p>7 (Whereupon, a break was taken from</p> <p>8 11:15 to 11:23.)</p> <p>9 MR. STAR: All right. Let's go back on</p> <p>10 the record.</p> <p>11 BY MR. STAR:</p> <p>12 Q. Sir, can you flip to the license</p> <p>13 agreement, which is Exhibit G?</p> <p>14 A. (Doing as indicated.)</p> <p>15 MR. STAR: My understanding, and Wes,</p> <p>16 correct me if I'm wrong, is that Kevin will be</p> <p>17 the designee to testify as to the details of</p> <p>18 entering into the license agreement, but I</p> <p>19 just have some general questions here for --</p> <p>20 for Otto about the license agreement.</p> <p>21 BY MR. STAR:</p> <p>22 Q. Sir, if you flip to page 2 of the</p> <p>23 license agreement, in Section 4.1. Do you</p> <p>24 agree with me that under this agreement, the</p> <p>25 licensee is Hodell?</p>	<p style="text-align: right;">Page 71</p> <p>1 of SAP. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And that language was also</p> <p>4 included in this document when it was signed</p> <p>5 on December 23rd, 2005, correct?</p> <p>6 A. Correct.</p> <p>7 Q. So going back to paragraphs 14</p> <p>8 and 15 of the first amended complaint, where</p> <p>9 it alleges that LSi was an authorized agent</p> <p>10 and reseller of SAP Business One, and that LSi</p> <p>11 was the duly authorized agent of SAP for the</p> <p>12 express purpose of making representations</p> <p>13 concerning the suitability and functionality</p> <p>14 of SAP Business One, you would agree with me</p> <p>15 that the language out of Section 4.1 of the</p> <p>16 license agreement that we just reviewed</p> <p>17 actually contradicts your allegations in</p> <p>18 paragraph 14 and 15 of the complaint, correct?</p> <p>19 MR. LAMBERT: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. STAR:</p> <p>22 Q. What -- what do you think is --</p> <p>23 strike that.</p> <p>24 In what way do you think that those</p> <p>25 allegations are not contradictory to the</p>
<p style="text-align: right;">Page 70</p> <p>1 A. Is that the definition on the</p> <p>2 front page? Yes.</p> <p>3 Q. Okay. And you agree with me that</p> <p>4 at the time, December 23rd, 2005, that Hodell</p> <p>5 signed the license agreement, the reseller for</p> <p>6 Business One was LSi, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Paragraph 4.1 then, you</p> <p>9 would agree with me, that -- that this says</p> <p>10 that Hodell acknowledges and agrees that the</p> <p>11 SAP reseller, being LSi, through which Hodell</p> <p>12 has arranged for the procurement of this</p> <p>13 agreement, or from which Hodell receives any</p> <p>14 services related to the software, is not the</p> <p>15 agent of SAP. Do you see that?</p> <p>16 A. Yes, I see that.</p> <p>17 Q. Okay. And you agree that this</p> <p>18 language was contained in the license</p> <p>19 agreement at the time your son signed it on</p> <p>20 December 23rd, 2005, correct?</p> <p>21 A. Correct.</p> <p>22 Q. It goes on to say, the SAP</p> <p>23 reseller is an independent company, person or</p> <p>24 entity with no authority to bind SAP or to</p> <p>25 make representations or warranties on behalf</p>	<p style="text-align: right;">Page 72</p> <p>1 language in paragraph 4.1 of the license</p> <p>2 agreement?</p> <p>3 A. We had actually a document in</p> <p>4 February '04 from IBiS, in which there was --</p> <p>5 contained their logo and the SAP business</p> <p>6 partner logo.</p> <p>7 Q. Anything else?</p> <p>8 A. That we had documents, marketing</p> <p>9 documents, that stated that SAP and SAP</p> <p>10 America were part of a team with the business</p> <p>11 partner in support and marketing of this</p> <p>12 product.</p> <p>13 Q. When did you have those</p> <p>14 documents?</p> <p>15 A. At various stages in '03 and '04.</p> <p>16 Q. Yet on December 23rd, 2005, your</p> <p>17 son, as the executive vice president of</p> <p>18 Hodell, signed the license agreement which</p> <p>19 contained this language in Section 4.1,</p> <p>20 stating, among other things, that LSi is not</p> <p>21 the agent of SAP --</p> <p>22 MR. LAMBERT: Objection.</p> <p>23 BY MR. STAR:</p> <p>24 Q. -- correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. If as of December 23rd, 2005, 2 Hodell believed that LSi was the authorized 3 agent of SAP, why would Hodell sign a license 4 agreement on December 23rd, 2005, with 5 language indicating that LSi is not the agent 6 of SAP? 7 MR. LAMBERT: I'm going to object. You 8 can ask that of Kevin, because we're getting 9 into a little more of the details surrounding 10 the execution of this agreement, and we'll let 11 you ask Kevin all about that. 12 BY MR. STAR: 13 Q. Okay. Sir, did you personally 14 have any involvement with reviewing and 15 executing the -- the license agreement with 16 SAP? 17 A. I read it, along with Kevin. 18 Q. Prior to Kevin signing it? 19 A. Correct. 20 Q. Okay. When do you recall reading 21 it prior to his signing? 22 A. Either the day he signed it or 23 shortly before. 24 Q. Okay. So you recall being aware, 25 before Kevin signed this document on behalf of</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. LAMBERT: I was going to go off the 2 record to discuss that. That's fine. I think if 3 there is a way that we can -- I don't have a 4 problem with you asking Otto that as an individual 5 testifying on his own behalf, as long as it's 6 clear somehow that it's not -- he's not the 7 designee of the Plaintiff to testify on that 8 subject, that you can ask him that. 9 MR. STAR: Okay. 10 MR. LAMBERT: I don't know how we can 11 logistically accomplish that, if there is a way. 12 MR. STAR: I think practically speaking, 13 it makes little difference, because he's the CEO, 14 and we're talking about his personal knowledge, 15 but let's -- let's go through it. 16 BY MR. STAR: 17 Q. Let me just go back to where we 18 were. Your testimony was that prior to 19 Kevin's signing of this document of 20 December 23rd, 2005, you personally read the 21 entire license agreement, correct? 22 A. Correct. 23 Q. And then you would have also read 24 Section 4.1 that we have been through here? 25 A. That is correct.</p>
<p style="text-align: right;">Page 74</p> <p>1 Hodell, that it contained the language in 2 Section 4.1, correct? 3 A. I'm not certain that the full 4 brunt of that entered my mind. 5 Q. Okay. My question is a little 6 bit different. Let me ask it in a -- in a 7 different way though. Prior to Kevin signing 8 this document, did you read the language in 9 Section 4.1? 10 A. I read the document. 11 Q. Okay. And that would have 12 included 4.1? 13 A. Correct. 14 MR. LAMBERT: Objection. 15 BY MR. STAR: 16 Q. Yes? Yes? 17 A. Yes. 18 Q. Okay. Did -- did reading Section 19 4.1 give you or Hodell any cause for concern? 20 MR. LAMBERT: I'm going to object. 21 Outside the scope. 22 MR. STAR: Well, let me be clear. I 23 thought what we had discussed before the 24 deposition is that he'd also be testifying to 25 things that are within his personal knowledge.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. My question then was, did 2 the language in Section 4.1 give you any cause 3 for concern when you read it, before -- before 4 Kevin signed it, signed the license agreement? 5 A. Yes. 6 Q. What concerns did it give you? 7 A. Am I asking -- answering as an 8 individual or CEO? 9 MR. LAMBERT: As an individual. Well, 10 and as a CEO. 11 THE WITNESS: This was a way for SAP to 12 limit their liability in a situation that 13 wasn't a good one possibly. 14 BY MR. STAR: 15 Q. Okay. Any other concerns that 16 were raised when you read Section 4.1 before 17 Kevin signed the document? 18 A. Yes. All of a sudden, out of the 19 blue, comes a license agreement, when three 20 years, two years, or a year earlier, we were 21 in the process of acquiring 80 licenses. 22 Q. What do you mean out of the blue? 23 A. We were never told that -- that 24 we had to sign this agreement. 25 Q. Never told by whom?</p>



<p style="text-align: right;">Page 77</p> <p>1 A. By your business partner.  2 Q. You mean LSi?  3 A. SAP -- SAP's business partner,  4 correct.  5 Q. Okay. So when you got this  6 document and you read through it, did you  7 contact anybody who was actually employed by  8 SAP to discuss the license agreement or its  9 terms?  10 A. I did not.  11 Q. Okay. Do you know if anybody  12 else did that on behalf of Hodell before this  13 document was signed?  14 A. No.  15 Q. Okay. So you had concerns about  16 the language in Section 4.1, yet your son went  17 ahead and signed this document with your  18 approval, correct?  19 A. Correct.  20 Q. Okay. Did you make any efforts  21 to negotiate the language in Section 4.1 with  22 SAP directly?  23 A. No. We were dealing with the  24 business partner --  25 Q. Okay.</p>	<p style="text-align: right;">Page 79</p> <p>1 the office and in the warehouse, to streamline  2 the warehouse management and accounting  3 system, synchronization, to provide some of  4 the other ancillary capabilities, EDI, faxing  5 of invoices, emailing of invoices, and  6 generally linking to an office cap --  7 Microsoft capability.  8 Q. What efforts did Hodell undertake  9 in 2003 to search for a new software product?  10 A. It actually started well before  11 that. In 1998, one of our IT people and I  12 visited Prophet 21 headquarters in  13 Pennsylvania.  14 Q. Where in Pennsylvania are they?  15 A. I want to say Yardley.  16 Q. Okay.  17 A. We spent a day and a half  18 reviewing the software. In '99, that same  19 individual and I visited the Software Solution  20 headquarters in Georgia to take a look at  21 TakeStock, their Windows version.  22 Q. Take, T-A-K-E?  23 A. T-A-K-E.  24 Q. Okay.  25 A. S-T-O-C-K.</p>
<p style="text-align: right;">Page 78</p> <p>1 A. -- on this license agreement.  2 Q. Did you make any efforts with LSi  3 to attempt to negotiate the language in  4 Section 4.1 of the license agreement?  5 MR. LAMBERT: Again, this is Otto  6 individually, right?  7 BY MR. STAR:  8 Q. Individually.  9 A. I did not.  10 Q. Do you know if anybody else did  11 that on behalf of Hodell?  12 A. I do not know.  13 Q. Let's move on to paragraph 16 of  14 the complaint, sir. In substance, that  15 paragraph states that in 2003, Hodell  16 commenced a search for a new software solution  17 to provide integrated financial and sales  18 management capabilities. Do you see that?  19 A. Yes.  20 Q. Okay. Describe for me in general  21 what -- and we touched on this in the  22 beginning of the deposition -- what were  23 Hodell's goals in acquiring new software in  24 2003?  25 A. To improve productivity, both in</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. TakeStock. Okay.  2 A. At that time, the company that  3 owned it was called Software Solutions. It's  4 now called Infor, I-N-F-O-R.  5 In 2000, that same individual and I  6 visited Computer Insights' headquarters in  7 Chicago owned by Denny Cowhey. We spent a day  8 and a half reviewing that software.  9 In 2002, we -- Kevin, Mark and I, spent  10 -- Mark Betts, the individual who had traveled  11 with me to the other locations -- spent three  12 days at IBiS facilities in Illinois, suburb of  13 Chicago, reviewing TakeStock again.  14 Q. At that point in time, IBiS was a  15 distributor of TakeStock?  16 A. Yes.  17 Q. Did you review Business One  18 during that meeting with IBiS in 2002?  19 A. Not at that time. And then in  20 2002, we also had another session with P21.  21 Q. Also in Yardley?  22 A. In -- no. In -- in our offices.  23 Q. Who from P21 came to your office  24 in 2002?  25 A. Krentz, I believe is his name.</p>

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1 were contracting with SAP in the development  
2 agreement?  
3 A. Because we were dealing with the  
4 business partner.  
5 Q. Okay. Well, let's look at the  
6 development agreement. It's Exhibit D to the  
7 complaint, sir.  
8 A. Which is it again?  
9 Q. D.  
10 A. D?  
11 Q. David.  
12 A. Got it.  
13 Q. This is the development  
14 agreement. It's a two-page document that  
15 makes up Exhibit D; is that correct?  
16 A. Correct.  
17 Q. You signed this document on  
18 December 20th, 2004 as the president of  
19 Hodell?  
20 A. Correct.  
21 Q. Okay. You read this document  
22 before you signed it?  
23 A. Correct.  
24 Q. Okay. Do you see anywhere in  
25 here that indicates that either SAP America or

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1 the development agreement in December of 2004,  
2 you also hadn't spoken with anybody at SAP  
3 America or SAP AG, correct?  
4 A. I spoke with their business  
5 partners, AmEx and IBiS.  
6 Q. But you hadn't actually spoken  
7 with an employee of SAP America or SAP AG,  
8 correct?  
9 A. That's correct.  
10 Q. You've been in business for many  
11 years now, right?  
12 A. Correct.  
13 Q. Okay. You have signed contracts  
14 with many different kinds of companies I  
15 imagine, correct?  
16 A. Correct.  
17 Q. Okay. You understand when you're  
18 signing a contract that typically the parties  
19 to that contract are going to be named in the  
20 contract itself, correct?  
21 A. Correct.  
22 Q. Okay. And you wouldn't normally  
23 expect that a party could -- could be made  
24 subject to a contract, if you hadn't even  
25 mentioned them by name in the contract, or

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1 SAP AG was a party to this agreement?  
2 MR. LAMBERT: Objection.  
3 THE WITNESS: Purchasing the SAP  
4 Business One software certainly is.  
5 BY MR. STAR:  
6 Q. Well, let me ask the question  
7 again, because I don't think that's  
8 responsive. Do you see anything in here that  
9 makes SAP America or SAP AG a party to this  
10 development agreement?  
11 MR. LAMBERT: Objection.  
12 THE WITNESS: No.  
13 BY MR. STAR:  
14 Q. Okay. And your testimony earlier  
15 today was that even as of the time that you  
16 signed the license agreement on December 23rd,  
17 2005, when your son signed it, that even as of  
18 that date, Hodell had no direct communications  
19 with anybody who was actually employed by SAP  
20 America or SAP AG, correct?  
21 A. Correct.  
22 Q. So necessarily at the time that  
23 you signed the license, or that you signed the  
24 distributor agreement -- pardon me.  
25 At necessarily the time that you signed

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1 even spoken to any of their employees about  
2 that contract, correct?  
3 A. Please rephrase that question.  
4 Q. Sure. Do you have any reason to  
5 believe that in any of your business dealings  
6 that you could make a part -- you could make  
7 some entity a party to a contract, if you  
8 hadn't even spoken with an employee or  
9 representative of that entity to make them a  
10 party to the contract?  
11 A. Yes --  
12 MR. LAMBERT: Objection.  
13 THE WITNESS: -- if the indication is  
14 that they are a team.  
15 BY MR. STAR:  
16 Q. So your belief is that SAP is a  
17 party to this development agreement; is that  
18 right?  
19 A. On the purchase of the 80  
20 licenses, yes.  
21 Q. Now, you mention the purchase of  
22 the 80 licenses, and then you mentioned a  
23 purchase order, right? That's the document  
24 that you have attached as Exhibit E; is that  
25 correct?

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1 here for SAP America or SAP AG, correct?  
2 A. Correct.  
3 Q. Yet you understood at the time  
4 you signed this agreement, December 20, 2004,  
5 that Business One was a product owned by SAP,  
6 correct?  
7 A. Correct.  
8 Q. Why didn't you insist then that  
9 somebody from SAP -- strike that.  
10 Why didn't you insist then that SAP  
11 America or -- and/or SAP AG actually be made a  
12 party to this agreement in December 2004?  
13 A. Item 4 indicates that SAP has  
14 agreed that Hodell-Natco will receive 80 user  
15 licenses of SAP Business One for the balance  
16 of the payment.  
17 Q. Okay. What led you to believe  
18 that SAP had actually made any agreement with  
19 Hodell?  
20 A. This agreement.  
21 Q. This -- this item in -- number 4,  
22 on page 2 of the development agreement, that's  
23 what you're referring to?  
24 A. Correct.  
25 Q. Okay. But, again, at this point

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1 in time, you hadn't actually spoken with an  
2 employee of SAP America or SAP AG, correct?  
3 A. Correct. I didn't see a need to.  
4 Q. And your understanding of this  
5 supposed agreement by SAP was based on what?  
6 A. It's based on this statement.  
7 Q. And it's a statement --  
8 A. I believe when --  
9 Q. -- by whom?  
10 A. -- when people tell me this, when  
11 I have dealt with them before, that that is  
12 the case.  
13 Q. It was a statement by whom, sir?  
14 A. Mr. Lowery and LSi and  
15 Dale Van Leeuwen.  
16 Q. Okay. You agree it was not a  
17 statement by SAP America, correct?  
18 MR. LAMBERT: Objection.  
19 THE WITNESS: I treat SAP America  
20 under, in this situation, the same as the  
21 business partner.  
22 BY MR. STAR:  
23 Q. Okay. That's not my question.  
24 You agree there is no statement in this  
25 development agreement by SAP America, correct?

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1 MR. LAMBERT: Objection.  
2 THE WITNESS: Correct.  
3 BY MR. STAR:  
4 Q. Okay. You also agree that there  
5 is no statement in this development agreement  
6 by SAP AG, correct?  
7 MR. LAMBERT: Objection.  
8 THE WITNESS: Correct.  
9 BY MR. STAR:  
10 Q. Okay. And actually, had you  
11 thought that either SAP America or SAP AG were  
12 intended to and actually became parties to  
13 this development agreement, you would have had  
14 no reason to sign the license agreement in  
15 December 2005, right?  
16 MR. LAMBERT: Objection.  
17 THE WITNESS: That's not correct.  
18 BY MR. STAR:  
19 Q. Okay. What is not correct about  
20 that?  
21 MR. LAMBERT: I'm going to object this  
22 is outside the scope of Mr. -- of Otto's  
23 designation. If you want to ask him  
24 individually, you can ask him individually.  
25 BY MR. STAR:

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1 Q. I'll ask him -- that question is  
2 asked to you individually, sir. What was not  
3 correct about that?  
4 A. At the time we needed additional  
5 licenses, and it was the only way we could  
6 lock in the price for those additional  
7 licenses. That was generally my  
8 understanding.  
9 Q. What time are you talking about,  
10 December 2005 or '04?  
11 A. 2005.  
12 Q. Okay.  
13 A. At the signing of the agreement.  
14 Q. Prior to December 23rd, 2005, had  
15 LS -- had Hodell actually taken delivery of  
16 Business One software? Had it received the  
17 software?  
18 A. No, but we had purchased it.  
19 Q. When did you first receive the  
20 SAP Business One software?  
21 A. I don't recall the specific day  
22 that it was first put on one of our servers.  
23 Q. Do you know how it came to  
24 Hodell? Was it shipped?  
25 A. I don't know.

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<p style="text-align: right;">Page 109</p> <p>1 BY MR. STAR: 2 Q. Is that right? 3 A. Correct. 4 Q. Besides this communication with 5 Mr. Van Leeuwen, did you have any other 6 information that caused you to believe that 7 signing the license agreement was simply to 8 license or lock in the price for the 9 additional 40 CRM users? 10 MR. LAMBERT: Objection. This is to 11 Otto individually. 12 BY MR. STAR: 13 Q. Sure. 14 A. It's my belief that by this time, 15 SAP knew that this would not handle the number 16 of users, and it was a -- a way for them to 17 limit their liability. That's my personal 18 impression. 19 MR. STAR: Can you read back my 20 question? 21 (Whereupon, the court reporter read 22 back the requested testimony.) 23 BY MR. STAR: 24 Q. Can you answer that question, 25 sir?</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Correct. 2 Q. What information did you uncover 3 prior to December 23rd, 2005 about declining 4 information on the number of users? 5 A. I think that's the first time I 6 saw a reference where there was a distinction 7 made between number of employees and maximum 8 users. 9 Q. And what specifically did you 10 see? 11 A. I don't recall the exact 12 information. 13 Q. Okay. Prior to seeing this 14 information on the internet before 15 December 23rd, 2005, what was Hodell's belief 16 about the number of users that Business One 17 could support? 18 A. Five hundred. 19 Q. Five hundred users or employees? 20 A. Employees have nothing to do with 21 it. It's users. 22 Q. Number of users -- 23 A. Yeah. 24 Q. -- in the organization? 25 A. I don't understand why number of</p>
<p style="text-align: right;">Page 110</p> <p>1 A. I thought I did. 2 THE WITNESS: Could you please read it 3 again? 4 THE REPORTER: How do you -- is it 5 Mr. Van -- how do you pronounce -- 6 THE WITNESS: Van Leeuwen. 7 THE REPORTER: Okay. 8 (Whereupon, the court reporter read 9 back the requested testimony.) 10 MR. LAMBERT: Is my objection noted on 11 there? 12 THE REPORTER: (Nods head.) 13 MR. LAMBERT: Okay. 14 THE WITNESS: Am I answering as an 15 individual? 16 BY MR. STAR: 17 Q. Yes. 18 A. We had gone on the internet and 19 seen some indication that the number of users 20 being -- the limit on the number of users was 21 declining, the number of users. 22 Q. When was this? 23 A. Sometime during '05 or '04. 24 Q. Prior to December 23rd of 2005, 25 right?</p>	<p style="text-align: right;">Page 112</p> <p>1 employees limits a system, if they're not 2 users. 3 Q. Okay. So prior to you looking 4 for and finding information on the internet, 5 which also occurred before December 23rd, 6 2005, you're telling me it was Hodell's belief 7 that Business One could support up to 500 8 users? 9 A. We were told that. 10 Q. By whom? 11 A. By LSi and by American Express. 12 Q. Who at LSi told you that -- that 13 Business One could support up to 500 users? 14 A. Dale Van Leeuwen. 15 Q. When did he tell you that? 16 A. December 3rd, 2003. 17 Q. How do you remember that date so 18 specifically? 19 A. At that point -- at that meeting, 20 I stated to American Express and Dale Van 21 Leeuwen, who was on a teleconference with us, 22 the other -- the American Express people were 23 in our facility. We had a ten-year compounded 24 growth rate at that point that was in excess 25 of ten percent per year. We were -- if we</p>



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1 continued that pace, in the next ten years, we  
2 would exceed 300 users, with productivity  
3 improvements promised, and all the literature  
4 that we had and efficiencies, 300 users would  
5 carry us. We did not want to be doing an  
6 implementation of software that would not be  
7 viable for the next decade. And I was assured  
8 by both parties that 300 users is -- the  
9 system is capable of supporting 300 users.  
10 Q. Which --  
11 A. I said I would not proceed unless  
12 that was -- assurance was made.  
13 Q. Well, which was it, that  
14 Mr. Van Leeuwen told you it was 500 users or  
15 300 users?  
16 A. He said he had information that  
17 indicated 500.  
18 Q. Okay. What specific information  
19 did he tell you he had?  
20 A. A SAP document.  
21 Q. What SAP document?  
22 A. I don't --  
23 Q. Did you ask for that document?  
24 A. We subsequent -- we had documents  
25 of our own that indicated that, 500 employees.

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1 Q. Okay. We're referring right now  
2 to a conversation that you had with  
3 Mr. Van Leeuwen on December 3rd, 2003, that  
4 also involved American Express, who you said  
5 was at your actual office?  
6 A. Yes.  
7 Q. Mr. Van Leeuwen was on a  
8 conference --  
9 A. Yes.  
10 Q. -- right?  
11 A. Correct.  
12 Q. Okay. Your testimony is that  
13 Van Leeuwen says during that conversation that  
14 Business One can support up to 500 users, and  
15 you also said, I believe, that Van Leeuwen  
16 referenced a document from SAP that had that  
17 information, right?  
18 A. Correct.  
19 Q. Okay. My question to you is, did  
20 you obtain that document from Mr. Van Leeuwen  
21 at any time prior to December 23rd, 2005?  
22 A. I believe we already had such a  
23 document.  
24 Q. You had a document that actually  
25 said Business One can support 500 users?

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1 A. It said 500 employees.  
2 Q. Five hundred employees. Well,  
3 you just said earlier, sir, that you don't  
4 understand what the number of employees has to  
5 do with the number of users. What did you  
6 mean by that?  
7 A. No. What I said was, nonuser  
8 employees have nothing to do with capacity,  
9 therefore, a logical assumption would be that  
10 the number of employees specified that define  
11 capacity of the system is users.  
12 Q. I see. So when you would read in  
13 a document that Business One could support an  
14 organization up to 500 employees, you just  
15 assumed that that meant 500 users; is that  
16 right?  
17 A. Correct.  
18 Q. Okay. That's an awful big  
19 assumption to make without further  
20 investigating; wouldn't you agree?  
21 A. I did investigate it.  
22 Q. With whom?  
23 A. I confronted SA -- American  
24 Express and IBiS, and asked for specific  
25 confirmation that it could handle 300 users.

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1 Q. And what did they give you as  
2 specific confirmation, sir?  
3 A. It will handle 300 users.  
4 Q. That's all they said?  
5 A. Correct.  
6 Q. Who said it?  
7 A. I -- Dale Van Leeuwen said he had  
8 a document that talked about 500 users, but  
9 300 users was within the system capability.  
10 Q. Well, I think you just said  
11 that Dale Van Leeuwen was referencing a  
12 document that said that it could handle up to  
13 500 employees, not users, correct?  
14 A. At that time, he said users, but  
15 we had a document that said employees.  
16 Q. But you just assumed that  
17 employees meant users, right?  
18 A. That's a very logical assumption.  
19 Q. You didn't actually contact  
20 anybody at SAP?  
21 A. Yes, I did.  
22 Q. An employee --  
23 A. The SAP business partner.  
24 Q. Let me finish the question. You  
25 did not actually contact any person employed



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1 directly by SAP America, or SAP AG, to confirm  
2 that Business One could handle 300 or 500  
3 users back in December of 2003, correct?  
4 MR. LAMBERT: Objection.  
5 THE WITNESS: Correct.  
6 MR. HULME: Okay. I have a question.  
7 Are those cookies for dissemination?  
8 THE WITNESS: For you folks. I can't  
9 have any.  
10 BY MR. STAR:  
11 Q. Now, you said that prior to  
12 December 23rd, 2005, Hodell had gone on to the  
13 internet and seen information suggesting that  
14 the number of users for -- possible on  
15 Business One had been decreased, right?  
16 A. I believe so.  
17 Q. When did that happen, and what  
18 did you find?  
19 A. I would have to refresh my memory  
20 from the documents. I would have to dig them  
21 out.  
22 Q. Fair to say, though, that prior  
23 to signing the license agreement on  
24 December 23rd, 2005, Hodell was aware that  
25 there was information publically available,

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1 indicating that the number of users possible  
2 on Business One might be less than 300?  
3 A. Yes.  
4 Q. When did LSi -- strike that.  
5 Just going back to the development agreement  
6 for a moment, the caption on that document, if  
7 you flip back to the first page, mentions it's  
8 between Hodell and IBiS, which is a wholly  
9 owned company of LSi. If I just would, in  
10 connection with the development agreement,  
11 refer to LSi, you understand that I'm  
12 referring to LSi and IBiS; is that fair?  
13 A. Yes.  
14 Q. Okay. When did LSi commence work  
15 under the development agreement?  
16 A. Subsequent to the -- the payment  
17 of our down payment.  
18 Q. Okay. Do you know an exact date?  
19 A. I would assume the next day --  
20 Q. Okay.  
21 A. -- after receiving the money.  
22 Q. And the first payment was  
23 \$60,000, right?  
24 A. Correct.  
25 Q. And the development agreement

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1 called for that initial \$60,000 payment to be  
2 the first installment, with another \$60,000  
3 due 150 days after the signing of the  
4 development agreement, and a final payment of  
5 another \$60,000 due at 300 days after signing,  
6 right?  
7 A. Correct.  
8 Q. Okay. And those second and third  
9 installments of \$60,000 each were based on LSi  
10 having made significant progress or suitable  
11 progress in the development of the In-Flight  
12 application, correct?  
13 A. Correct.  
14 Q. Okay. Between the date that you  
15 signed the development agreement, December 20  
16 of 2004 and 150 days later, approximately five  
17 months later, had Hodell gone on the internet  
18 and found information suggesting that the  
19 number of users of SAP Business One had been  
20 reduced, and that it possibly could not handle  
21 up to 300 users?  
22 A. I don't know if it was at that  
23 160 day -- 180-day period or the subsequent  
24 one.  
25 Q. Okay. Do you recall at which --

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1 do you recall when Hodell made the second  
2 installment payment under the development  
3 agreement, the second \$60,000 payment?  
4 A. No, but we provided the exhibit  
5 that itemizes all the payments.  
6 Q. Do you know if Hodell had found  
7 the information that you referenced from the  
8 internet, concerning the decreased number of  
9 users possible on Business One, before Hodell  
10 made the second \$60,000 payment under the  
11 development agreement?  
12 A. I don't know.  
13 Q. Do you know if Hodell had found  
14 the information that you're referring to on  
15 the internet about the decreased number of  
16 users for Business One before it made the  
17 third \$60,000 payment under the development  
18 agreement?  
19 A. I believe so.  
20 Q. Okay. Do you recall when the  
21 third \$60,000 payment was made under the  
22 development agreement?  
23 A. I would have to check the  
24 schedule.  
25 Q. Do you recall if that third

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1 BY MR. STAR:  
2 Q. Mr. Reidl, before we took our  
3 break, we were talking about information that  
4 Hodell had obtained from the internet  
5 concerning the number of users that were  
6 possible in SAP Business One prior to signing  
7 the license agreement on December 23rd, 2005.  
8 MR. STAR: Can you mark this as the  
9 next exhibit, please.  
10 (Whereupon, Exhibit 5 was marked for  
11 identification.)  
12 MR. HULME: Five?  
13 THE REPORTER: Five.  
14 MR. STAR: Five.  
15 BY MR. STAR:  
16 Q. Sir, I marked here as Exhibit 5 a  
17 document that was produced by Hodell, with the  
18 number down at the bottom right-hand corner of  
19 Hodell 494. And this is a -- appears to be an  
20 article that was on the internet. Is this one  
21 of the documents, or pieces of information  
22 that you believe Hodell had prior to signing  
23 the license agreement in December of 2005?  
24 A. I don't recall.  
25 Q. You agree this is dated

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1 November 1st, 2005?  
2 A. Yes, I see that.  
3 Q. And it's -- the title of the  
4 article is New SAP Business One 2005? You see  
5 that?  
6 A. Yes.  
7 Q. Okay. And the first line, it  
8 says, SAP has just released new functionality  
9 for their starter ERP package aimed at  
10 companies who are looking for 10 to 100 users.  
11 Do you see that?  
12 A. Uh-huh.  
13 Q. Yes?  
14 A. Yes.  
15 Q. Okay. You just don't recall if  
16 you had this actual document back in --  
17 A. The month before we signed. I --  
18 I believe we did, but I don't know.  
19 Q. Okay. So you -- you don't --  
20 strike that.  
21 You believe that Hodell did actually  
22 have this November 1st, 2005 document in its  
23 possession prior to signing the license  
24 agreement in December 2005?  
25 A. I don't know. I don't know. I

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1 don't recall.  
2 Q. Okay. But you do believe that  
3 Hodell had information in its possession,  
4 prior to signing the license agreement, that  
5 indicated that the number of users possible on  
6 Business One had been decreased to something  
7 less than 300 users, right?  
8 A. Correct.  
9 Q. Are you able to identify any  
10 particular document that Hodell had, prior to  
11 December 23rd, 2005, that did indicate that  
12 the number of users for Business One had been  
13 decreased below 300?  
14 A. Not without searching the files.  
15 Q. Do you recall if you personally  
16 had searched for internet information -- for  
17 information on the internet about Business One  
18 and the number of users prior to  
19 December 23rd, 2005?  
20 A. I don't recall if I personally  
21 did.  
22 Q. Do you know, or have any  
23 recollection, as to who might have searched  
24 for that information at Hodell?  
25 A. Possibly William Rex.

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1 Q. What is the last name?  
2 A. Rex, R-E-X.  
3 Q. What is Mr. Rex's position?  
4 A. He's vice president, treasurer  
5 and shareholder.  
6 Q. Was that his position back in  
7 2005 as well?  
8 A. Correct.  
9 Q. Off the record for a second.  
10 (Whereupon, a brief off-the-record  
11 discussion was held at 1:31.)  
12 BY MR. STAR:  
13 Q. What was Mr. Rex's role, if any,  
14 in connection with Hodell's acquisition of  
15 licenses for Business One?  
16 MR. LAMBERT: Are we back on the  
17 record?  
18 MR. STAR: Yes.  
19 THE WITNESS: Kevin will answer that.  
20 BY MR. STAR:  
21 Q. Okay. You don't have any  
22 personal knowledge as to Mr. --  
23 A. No.  
24 Q. -- Rex's role?  
25 A. No.

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1 the last few words of the -- of the quotation  
2 to put in parens sic, which indicates that  
3 there is some typographical error was in the  
4 -- in the original, right?  
5 A. What do you have there?  
6 Q. I'm looking at paragraph 24 of  
7 your complaint, at the fourth line, at the end  
8 of the quote that I just read to you. Do you  
9 see -- do you see in parens the letters S-I-C?  
10 A. Uh-huh.  
11 Q. Yes?  
12 A. Yes.  
13 Q. And you agree with me that --  
14 that that designation usually refers to some  
15 typographical error that is in the original  
16 form of -- of whatever your quoting is from,  
17 correct?  
18 A. I don't know that that's what it  
19 refers to.  
20 Q. Okay. Well, what were you  
21 referring to when this allegation was made by  
22 Hodell?  
23 A. The turnkey solution.  
24 Q. All right. What document, if  
25 any, were you referring to when you made this

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1 quote in the complaint?  
2 A. IBiS presented, represented that  
3 to us verbally as a business partner of SAP  
4 America.  
5 Q. To be clear, this quote in  
6 paragraph 24 is taken from an oral statement  
7 by Mr. Van Leeuwen, and it's not taken from a  
8 document, correct?  
9 A. The first sentence or the entire  
10 paragraph 24?  
11 Q. The quoted language in paragraph  
12 24, sir?  
13 A. That is from a verbal statement.  
14 Q. When did you first meet  
15 Dale Van Leeuwen?  
16 A. I believe you asked that earlier,  
17 and I thought I had already answered that.  
18 Q. Could you refresh me, sir?  
19 A. It was when we first were  
20 involved with FACTS, he was with -- I believe  
21 he was an employee of the firm that we  
22 conducted the transaction with. That firm  
23 folded, and we worked for a couple of years  
24 with one of their other employees, and then  
25 Dale approached us about assisting us --

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1 Q. And --  
2 A. -- with --  
3 Q. Sorry.  
4 A. -- with developments, upgrades,  
5 and conversion of acquisition data and so  
6 forth into FACTS.  
7 Q. Okay. Sorry to ask the question  
8 again, if I did. When do you recall first  
9 meeting him though?  
10 A. Perhaps '88, '89, 1989. I'm --  
11 I'm trying to go by recollection.  
12 Q. Paragraph 24, Hodell mentions  
13 that IBiS made certain representations about  
14 the integration of other software with  
15 Business One, including the In-Flight  
16 Enterprise application and Radio Beacon  
17 synchronization.  
18 What, if anything, did that mean to you  
19 at the time?  
20 A. I -- could you rephrase that  
21 question?  
22 Q. Sure. I mean, you say here in  
23 the last sentence of paragraph 24, concerning  
24 representations made to you by the IBiS Group  
25 and Mr. Van Leeuwen, that development of the

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1 vertical market space also included the  
2 integration of other software with SAP  
3 Business One, including the In-Flight  
4 Enterprise application and Radio Beacon  
5 synchronization. My question to you is, what  
6 did it mean to you at the time that there was  
7 going to be the In-Flight Enterprise  
8 application and Radio Beacon synchronization?  
9 What did you understand that to mean?  
10 A. That is what makes it a viable  
11 product in the fastener distribution industry.  
12 Q. That's -- that is what makes what  
13 a viable product, Business One?  
14 A. SAP Business One.  
15 Q. Your view, Hodell's view that --  
16 was that Business One by itself was not  
17 sufficient for Hodell's needs, correct?  
18 A. Absolutely.  
19 Q. Okay. And why?  
20 A. Because it didn't have a  
21 warehouse management system, and it did not  
22 have the idiosyncrasies of the fastener  
23 distribution industry inherent in the base  
24 package.  
25 Q. So what needed to be done to make



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1 Business One a suitable product for Hodell?  
2 A. Basically, the adaptations as  
3 spelled out in the details of the In-Flight  
4 project.  
5 Q. And when you say the In-Flight  
6 project, you're referring to the terms of the  
7 development agreement; is that right?  
8 A. The development that was inherent  
9 that -- in that development agreement.  
10 Q. Well, let's turn to that document  
11 again, sir. Again, that's Exhibit D to the  
12 complaint. It's D.  
13 A. D.  
14 Q. Development agreement shows,  
15 under the heading Project Description, that  
16 it's going to be the development of the IBiS  
17 Group's In-Flight Enterprise application and  
18 its integration into SAP Business One software  
19 for Hodell-Natco. Do you see that?  
20 A. Yes.  
21 Q. Okay. Was it your understanding  
22 that as of the date of this development  
23 agreement in December 2004, that the In-Flight  
24 Enterprise application did not even exist at  
25 that time, correct?

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1 A. Correct.  
2 Q. Okay. And this was going to be a  
3 brand new application to be developed by  
4 IBiS/LSi for Hodell, correct?  
5 A. Not absolutely.  
6 Q. Okay. What is wrong with that  
7 statement?  
8 A. Because IBiS had worked on the  
9 enhancements to FACTS to make it a product for  
10 use in the fastener industry, so they had  
11 extensive experience on the aspects of the  
12 fastener industry that needed to be  
13 incorporated in this, so it wasn't a complete  
14 start from scratch.  
15 Q. Okay. Understood that your view  
16 there then is that IBiS or LSi would -- would  
17 already be hitting the ground running, because  
18 they had some experience working for Hodell in  
19 the past, correct?  
20 A. Compared to somebody else  
21 starting from scratch.  
22 Q. Right. But you would agree that  
23 they had to build this application essentially  
24 from the start, it didn't exist --  
25 A. Correct.

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1 Q. -- at the time?  
2 Okay. And your view then, and your  
3 understanding then, was that the application  
4 would be integrated with Business One  
5 software, correct?  
6 A. Correct.  
7 Q. So you, of course, understood  
8 that no company anywhere in the world had  
9 actually done an implementation of SAP  
10 business software integrated with the then  
11 nonexistent In-Flight application, correct?  
12 A. For the fastener industry or for  
13 other industries?  
14 Q. Well, the In-Flight application  
15 didn't exist for any industry, correct?  
16 A. Correct.  
17 Q. So necessarily Hodell understood  
18 that there was no implementation of SAP  
19 Business One anywhere in the world that was  
20 going to be exactly like the implementation  
21 for Hodell, right?  
22 A. Or for -- for the fastener  
23 industry, not just for Hodell.  
24 Q. Well, this wasn't contemplated  
25 for the fastener industry in general. It was

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1 an implementation for Hodell, correct?  
2 A. It was meant to be a -- a package  
3 for the vertical integration component of an  
4 add-on for SAP Business One, to give them  
5 access to the fastener industry.  
6 Q. Okay. Let me ask my question  
7 again. Hodell understood that no company  
8 anywhere in the world had actually implemented  
9 SAP Business One with the In-Flight add-on as  
10 of December of 2004, correct?  
11 A. Correct.  
12 Q. And that's necessarily true  
13 because the In-Flight add-on simply did not  
14 exist at that time, correct?  
15 A. Correct.  
16 Q. And is it your testimony that the  
17 purpose -- part of the purpose in entering  
18 into the development agreement, was that you  
19 were trying to, in cooperation with LSi,  
20 develop an application that could be re-sold  
21 to other fastener companies like Hodell; is  
22 that right?  
23 A. That they could resell.  
24 Q. Well, that -- and Hodell would  
25 see some profit from that, correct?

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1 A. Yes, because we're the ones  
2 taking the risk up front.  
3 Q. Okay. So in other words, this  
4 was a joint venture between Hodell and LSi to  
5 develop this add-on, that could then be  
6 re-sold by LSi, to both the profit of LSi and  
7 Hodell, correct?  
8 A. Not a joint venture. They were  
9 doing the development. We bought the  
10 licenses. We agreed to pay for those up  
11 front, so that they would have money to  
12 develop this for their marketing.  
13 Q. And if this application were  
14 successful, and it was then sold to other  
15 fastener companies, Hodell stood to gain from  
16 that, correct?  
17 A. Yes, for the first 100 users, I  
18 believe.  
19 Q. Okay. And --  
20 A. First 500 users.  
21 Q. What did Hodell stand to gain  
22 from that?  
23 A. A reduction in the cost of our  
24 SAP licenses, by a refund.  
25 Q. How much of a refund?

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1 A. Against a -- as a credit, I  
2 believe, against maintenance.  
3 Q. How much of a refund?  
4 A. Of \$200 per user, up to 500  
5 users.  
6 Q. So up to \$100,000?  
7 A. Correct.  
8 Q. What about if this was a  
9 tremendously successful product, and you sold  
10 -- or LSi was able to resell this In-Flight  
11 application to numerous different companies  
12 around the world, would it -- would Hodell  
13 have expected to see some profit from that?  
14 A. No.  
15 Q. Not at all?  
16 A. Not at all. You -- off the  
17 record, may I say something?  
18 MR. HULME: Ask your lawyer.  
19 THE WITNESS: Oh, okay.  
20 MR. LAMBERT: We'll talk about that at  
21 a break.  
22 THE WITNESS: The comment is we  
23 wouldn't benefit from another development, but  
24 the more people that use something, the  
25 stronger the product becomes, and you

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1 indirectly benefit from the use of that  
2 product.  
3 BY MR. STAR:  
4 Q. Okay.  
5 A. That's all I was -- it was no  
6 monetary thing, but it ultimately makes it a  
7 -- the products keep getting better, because  
8 there are more users.  
9 Q. Okay.  
10 A. So I answered financial question.  
11 We would not gain from any further.  
12 Q. At the time you signed the  
13 development agreement in December of 2004 on  
14 behalf of Hodell, did you personally  
15 understand that there were some risks in  
16 trying to have an implementation of SAP  
17 Business One that would be utilizing an add-on  
18 product, an application, that hadn't yet been  
19 developed?  
20 A. Define -- a risk in what way?  
21 Q. Well, you understood you weren't  
22 simply going to be installing SAP Business One  
23 out of the box, so to speak, correct?  
24 A. In-Flight was going to be fully  
25 functional, and then you would be installing

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1 it out of the box.  
2 Q. You didn't license In-Flight from  
3 SAP, correct?  
4 A. We licensed SAP from In-Flight  
5 from an SAP partner.  
6 Q. Okay. And you actually went into  
7 the development agreement for the purpose of  
8 having LSi build the In-Flight application,  
9 correct?  
10 A. We went into it for the purpose  
11 of having a vertical integration package for  
12 the fastener industry available to --  
13 Q. And you --  
14 A. -- to be integrated into SAP  
15 Business One.  
16 Q. And in your view, to do that, it  
17 required the development of this new  
18 application called In-Flight, right?  
19 A. Correct.  
20 Q. Okay. And so you necessarily  
21 understood, at the time you signed the  
22 development agreement, that the success of the  
23 eventual implementation could hinge in part on  
24 the successful development of In-Flight,  
25 correct?



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1 A. In part.  
2 Q. You would agree with me that if  
3 In-Flight was not properly developed to  
4 integrate with SAP Business One, that could  
5 materially impact the ability to integrate the  
6 SAP Business One software, or implement the  
7 software, correct?  
8 A. Correct.  
9 Q. Paragraph 25 of the complaint,  
10 you refer to a December 3rd, 2003 meeting,  
11 which I think is the one you have been  
12 referencing throughout the day today, with  
13 Ms. Vitantonio, and a gentleman named  
14 Michael Neuendorff, N-E-U-E-N-D-O-R-F-F, both  
15 of American Express, right?  
16 A. Correct.  
17 Q. And that is the same meeting you  
18 have been talking about, where Mr. Van Leeuwen  
19 was on conference call?  
20 A. Correct.  
21 Q. And it's at that meeting that you  
22 contend that you were given the document that  
23 is Exhibit A to the complaint, right? Which  
24 again is the SAP Business One Brief.  
25 A. Correct.

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1 Q. In paragraph 26, you say that on  
2 December 19th of 2003, at 3:30 p.m., you  
3 received a phone call from Vitantonio and  
4 Eric Worth. Was Mr. Worth also from American  
5 Express?  
6 A. Correct.  
7 Q. You go on to say here that it was  
8 expressly discussed, and left you with the  
9 assurance that SAP Business One had sufficient  
10 capability to serve a business the size of  
11 Hodell. What does -- what exactly was  
12 represented to you during that December 19,  
13 2003 phone call?  
14 A. That it was scalable up to our  
15 growth requirements for the next ten years.  
16 Q. Did you specifically convey to  
17 Ms. Vitantonio, or Mr. Worth, the requirements  
18 of Hodell over the -- over the next ten years?  
19 A. The requirement was spelled out  
20 to Ms. Vitantonio on the December 3rd meeting.  
21 Q. And what exactly did you tell  
22 Ms. Vitantonio on December 3rd, 2003?  
23 A. I spelled all that out before.  
24 Q. It's the information you already  
25 testified to earlier?

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1 A. Correct.  
2 Q. Did you tell her the number of  
3 users that Hodell expected to have?  
4 A. I would like to know how many  
5 more times I'm supposed to answer this  
6 question.  
7 Q. Did you tell her it, sir?  
8 A. Yes.  
9 Q. What did you say exactly?  
10 A. I told her and Dale Van Leeuwen,  
11 who was on the extension, on the conference  
12 call, that our company had been growing at a  
13 compounded rate of in excess of ten percent  
14 per year for the previous ten years.  
15 Mr. Van Leeuwen was aware of that growth,  
16 because he was with us during that time. And  
17 based on our growth and user requirements, and  
18 our desire not to have to implement another  
19 software in the next decade, other than the  
20 one we're trying to choose now, that we would  
21 need 300 users. And I needed assurance before  
22 I go any further.  
23 Q. But you never sent anything in  
24 writing to Ms. Vitantonio, or any of her  
25 colleagues at American Express, that conveyed

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1 that thought exactly, did you?  
2 A. Correct.  
3 Q. You eventually decided not to  
4 deal with American Express anymore, correct?  
5 A. Because they felt that the SAP  
6 partner IBiS was a better route to the  
7 vertical integration requirement for the  
8 fastener industry. Their own applet was  
9 probably not suitable.  
10 Q. So if I understand you correctly,  
11 is it your testimony that American Express  
12 conveyed to you that the idea that the product  
13 that they had was not particularly suited for  
14 Hodell's needs?  
15 A. Not at the get-go, not at the  
16 outset. It would require modifications.  
17 Q. What kind of modifications did  
18 they tell you, did American Express tell you  
19 would be needed to make it fit Hodell's needs?  
20 A. They didn't specifically identify  
21 them. We discussed with them some of our  
22 needs, and the intricacies of that were not  
23 inherent in their package at the very start.  
24 Q. Okay. How did you communicate to  
25 American Express that you weren't going to

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1 same.  
2 Q. What is the same, SAP America and  
3 SAP AG?  
4 A. SAP owns SAP America.  
5 Q. Fine. We'll just refer to it  
6 collectively as SAP. Your contention in this  
7 lawsuit is that SAP committed fraud on Hodell,  
8 correct?  
9 A. Correct.  
10 Q. When did that fraud occur?  
11 MR. LAMBERT: Objection.  
12 THE WITNESS: When they --  
13 MR. LAMBERT: You can answer.  
14 THE WITNESS: When their business  
15 partner told us about the number of users,  
16 that's when it started.  
17 BY MR. STAR:  
18 Q. So that was the December 3rd,  
19 2003 meeting, correct?  
20 A. It started then, yes.  
21 Q. Okay. What then happened that  
22 you think constituted fraud by SAP?  
23 A. Taking 120 user license, when  
24 they were convinced it was outside the sweet  
25 spot.

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1 Q. Where did SAP take or issue 120  
2 user licenses?  
3 A. They knew that we bought 80  
4 before, and we were looking to add 40 CRMs  
5 when we signed that agreement.  
6 Q. How many licenses did you  
7 actually get from SAP?  
8 A. I would have to defer to Kevin,  
9 because I believe we added some more.  
10 Q. Do you have a particular  
11 understanding of what is meant by fraud?  
12 A. Misrepresentation.  
13 Q. Okay. You'd agree with me that  
14 that would be a statement by somebody of a  
15 fact that they knew not to be true at the time  
16 that they made the statement?  
17 A. Correct.  
18 Q. Yes. Can you identify for me any  
19 factual statement made by anybody actually  
20 employed by SAP to Hodell, prior to  
21 December 23rd, 2005, concerning Business One  
22 at all?  
23 A. We had no dealings with SAP  
24 directly up to that point. We dealt through  
25 their business partner, and in our view, they

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1 are one in the same.  
2 MR. STAR: Off the record for a second.  
3 (Whereupon, a break was taken from 3:05  
4 until 3:21.)  
5 MR. STAR: Back on the record.  
6 BY MR. STAR:  
7 Q. So your testimony has been  
8 consistent with the allegations in the  
9 complaint, that Hodell anticipated a need of a  
10 total of 300 licenses for Business One,  
11 correct?  
12 A. Correct.  
13 Q. I'm also correct that at no time  
14 with respect to Business One, or with respect  
15 to the current software solution that Hodell  
16 has, has Hodell ever come close to 300 total  
17 users, right?  
18 A. Correct.  
19 Q. And that your testimony earlier  
20 today was there is 125 current licensees of  
21 the software you're using today; is that  
22 right?  
23 A. I defer to Kevin on those --  
24 Q. Okay.  
25 A. -- specific number.

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1 Q. All right. Do you know if at any  
2 point in time if Hodell has had more than 200  
3 licensed users of any particular software  
4 solution?  
5 A. No.  
6 Q. No, Hodell has not?  
7 A. No, Hodell has not.  
8 Q. Okay.  
9 MR. HULME: Double negatives --  
10 MR. STAR: Yeah.  
11 MR. HULME: -- are famous on records,  
12 famous.  
13 MR. STAR: I always try to catch them  
14 when I ask them --  
15 MR. HULME: Yeah.  
16 MR. STAR: -- so ....  
17 BY MR. STAR:  
18 Q. Paragraph 37 of the complaint,  
19 you say that it was expressly represented to  
20 Hodell that Business One could support as many  
21 as 250 users. Why do you mention 250 users  
22 there, when it's Hodell's contention that it  
23 was anticipating up to 300 users?  
24 A. Because it showed a departure.  
25 Q. What do you mean?

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1 A. It showed a difference between  
2 300 and 250.  
3 Q. So is it your contention that --  
4 that at some point in time, and I believe  
5 you've targeted that as December 3rd, 2003, it  
6 was told to you that Business One could  
7 support up to 300 users, but at some later  
8 point, it was told to you that Business One  
9 could only support up to 250 users; is that  
10 right?  
11 A. That was in a marketing document,  
12 not by a specific individual.  
13 Q. What marketing document are you  
14 referring to?  
15 A. I don't know that it's in here.  
16 Q. So just so I have this correct,  
17 it's your understanding that Hodell received  
18 some kind of marketing document, prior to  
19 December 23rd, 2005, that indicated that the  
20 number of users was only up to 250; is that  
21 correct?  
22 A. The document talked about number  
23 of employees.  
24 Q. And how many employees did it  
25 say?

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1 A. Two hundred fifty.  
2 Q. So you would have known right  
3 then that Business One might not be suitable  
4 for Hodell, if Hodell was expecting up to 300  
5 users?  
6 A. No. I was told specifically it  
7 had 300 users.  
8 Q. You were told that prior to  
9 receiving this document though, correct?  
10 A. Uh-huh.  
11 Q. Yes?  
12 A. Yes.  
13 Q. Okay. So you had been told in  
14 December of 2003, 300 users. And then you had  
15 been told sometime after, but before  
16 December 23rd, 2005, that it could only  
17 support up to 250 users, correct?  
18 A. Correct.  
19 Q. Okay. And so that would have  
20 caused Hodell to understand that Business One  
21 might not be the correct solution for it,  
22 right, if Hodell in fact wanted --  
23 A. Possibly.  
24 Q. -- 300 users?  
25 A. Possibly.

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1 Q. When you received that  
2 information that lowered the number from 300  
3 to 250, what, if anything, did you do to  
4 further investigate the number of users that  
5 were capable on Business One?  
6 A. At that point, we were committed  
7 to SAP Business One. Our investment had been  
8 made, so it would appear that it might not  
9 take us 10 years, maybe it would take us 7 or  
10 8 years.  
11 Q. When you say your investment was  
12 made, you're talking about the payments that  
13 you had made to LSi under the development  
14 agreement, correct?  
15 A. Yes.  
16 Q. And you agree that under the  
17 terms of the development agreement, you could  
18 have actually received back all the money that  
19 you gave to LSi, correct?  
20 MR. LAMBERT: Objection.  
21 THE WITNESS: Not at that point  
22 anymore.  
23 BY MR. STAR:  
24 Q. Well, if you turn to the  
25 development agreement, you'll -- you'll agree

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1 with me that under the general terms on the  
2 first page, it allowed Hodell to request a  
3 refund and release from the agreement, right?  
4 A. Under certain conditions.  
5 Q. Okay. Would you agree with me  
6 that if -- if Hodell had found out that the  
7 Business One software product was no longer  
8 suitable for its needs, because it wouldn't  
9 support the number of users that Hodell  
10 anticipated having, that that would be a  
11 reason that Hodell could back out of the  
12 development agreement?  
13 MR. LAMBERT: Objection.  
14 THE WITNESS: No, it would not.  
15 BY MR. STAR:  
16 Q. Why not?  
17 A. Because you made an investment,  
18 you don't know if you can get it back, and if  
19 it carries you seven years, it's better than  
20 nothing.  
21 Q. And at that point in time, what  
22 had the total investment been in terms of  
23 dollars by Hodell for the Business One system?  
24 A. I would have to defer to the  
25 document to look.



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1 Q. It would not have been more than  
2 \$180,000 though, correct?  
3 A. I can't say that specifically. I  
4 would have to look at the document and look at  
5 the time frame and the investments.  
6 Q. In paragraph 42 of the complaint,  
7 sir, you have a sort of timeline or a chart.  
8 Do you see that, paragraph 42?  
9 A. Yes.  
10 Q. Okay. There is an entry dated  
11 November 2005, and it indicates 10 to 100  
12 users, and hyphen, article about new SAP news  
13 release. Do you see that?  
14 A. That's the date of the article.  
15 Q. And that's the article that we  
16 marked as Exhibit 5, sir, is that correct? If  
17 you refer back to that. It's in front of you.  
18 A. Okay.  
19 Q. Yes?  
20 A. Yes.  
21 Q. Okay. So the reference in  
22 paragraph 42 to November 2005 and this article  
23 about SAP, is in fact a reference to this  
24 document that we marked as Exhibit 5, correct?  
25 A. Correct.

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1 Q. And based on your earlier  
2 testimony, you'd agree that if Business One,  
3 as according to this article, was targeted for  
4 customers for up to 100 users, that Business  
5 One would not have been a proper product for  
6 Hodell, because you were envisioning at least  
7 120 users, correct?  
8 A. Correct, but the question is at  
9 what time did I get this document?  
10 Q. How did you get this document, do  
11 you know?  
12 A. I think that was from an internet  
13 search.  
14 Q. Prior --  
15 A. After filing the complaint.  
16 Q. After filing the complaint?  
17 A. Yeah.  
18 Q. You testified --  
19 A. No, as -- to enter that  
20 information here to try and indicate when SAP  
21 knew what, SAP knew what.  
22 Q. Was this an internet search that  
23 you did yourself?  
24 A. I think Bill Rex did that, I  
25 believe.

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1 Q. You talked earlier about another  
2 internet search that was done before the  
3 license agreement was signed in December 2005.  
4 Just to be clear, are -- is it your testimony  
5 that there were two different points in time,  
6 once before the license agreement was signed,  
7 and once afterwards in connection with this  
8 lawsuit, that Hodell ran internet searches for  
9 information about the number of users that  
10 Business One could support?  
11 A. Correct.  
12 Q. Okay.  
13 A. I think what we uncovered was in  
14 the range of 250 employees.  
15 Q. At what time did you uncover  
16 that? You're referring to before the license  
17 agreement was signed?  
18 A. I believe so.  
19 Q. Do you know what Mr. Rex did to  
20 find the document that is marked as Exhibit 5?  
21 A. The only thing I can think of is  
22 internet search.  
23 Q. You have no reason to believe  
24 that Hodell would have been unable to find  
25 this particular document prior to signing the

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1 license agreement in December of 2005,  
2 correct?  
3 MR. LAMBERT: Objection.  
4 THE WITNESS: We didn't have any reason  
5 to try and look for a document at that time.  
6 BY MR. STAR:  
7 Q. My question is different though.  
8 You don't have any reason to believe that  
9 Hodell would have been -- would have been  
10 unable to obtain this document prior to  
11 signing the license agreement, correct?  
12 MR. LAMBERT: Objection.  
13 THE WITNESS: I don't know.  
14 BY MR. STAR:  
15 Q. In paragraph 42, you refer to an  
16 event dated October of 2004, and you reference  
17 less than 250 employees -- SAP news release  
18 (Ellen O'Brien, SAP.com.) Was there a  
19 particular document that you're referring to?  
20 A. You're back on that exhibit?  
21 Q. Paragraph 42, yes, sir.  
22 A. Okay.  
23 Q. The heading -- the entry under  
24 October 2004.  
25 A. Now, could you repeat your

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1 that question.  
2 Q. Do you have any recollection of  
3 that happening in 2006?  
4 A. Ask your question again, of what  
5 is it we're looking for in 2006?  
6 Q. Do you have any recollection of  
7 any actual SAP employee visiting Hodell's  
8 location in 2006?  
9 A. I can't answer that.  
10 Q. Is it because you don't have a  
11 recollection?  
12 A. I don't have a recollection.  
13 MR. STAR: Off the record.  
14 (Whereupon, a brief off-the-record  
15 discussion was held at 3:39.)  
16 BY MR. STAR:  
17 Q. Paragraph 51, you refer to a  
18 September 6th, 2007 phone call you received  
19 from Dale Van Leeuwen, where he, according to  
20 the complaint, admitted that initially SAP  
21 Business One had been represented to Hodell as  
22 being capable of supporting up to 300 users.  
23 Do you see that?  
24 A. Yes.  
25 Q. Is it your testimony that what

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1 MR. LAMBERT: Objection.  
2 THE WITNESS: We were assured by SAP  
3 business partner, therefore SAP, that the  
4 system would be capable of handling 300 users  
5 over the next decade, that we would experience  
6 productivity improvement, that we would  
7 experience efficiency improvements, real time  
8 access to data, and the support of SAP as a  
9 team.  
10 BY MR. STAR:  
11 Q. Okay. And you believe all of  
12 those representations were false?  
13 A. Correct.  
14 Q. Okay. And you also contend that  
15 because of those false representations, Hodell  
16 was caused to, or induced to enter the  
17 development agreement with LSi, correct?  
18 THE REPORTER: Can you say that one  
19 more time? Hodell was caused to or --  
20 BY MR. STAR:  
21 Q. Caused or induced to enter the  
22 development agreement with LSi, correct?  
23 A. Those, among others.  
24 Q. Okay. You also contend that  
25 Hodell, because of what you say were these

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1 Mr. Van Leeuwen was referring to was the  
2 representation that you said happened on  
3 December 3rd, 2003?  
4 A. Correct.  
5 MR. HULME: Rephrase that. Could you  
6 rephrase the question?  
7 BY MR. STAR:  
8 Q. Yeah. Paragraph 51, you're  
9 referring to a September '07 telephone call  
10 from Dale Van Leeuwen, where he claimed --  
11 where you claimed that he admitted that  
12 Business One had been represented to Hodell as  
13 being capable of supporting up to 300 users.  
14 My question to you is, was it your  
15 understanding that the representation about  
16 the number of users was actually made to  
17 Hodell during that December 3rd, 2003 meeting  
18 that you've referred to before?  
19 A. Correct.  
20 Q. Getting on paragraph, paragraph  
21 55 of the complaint, Hodell has set forth a  
22 claim for fraudulent inducement. What is  
23 Hodell's position as to what it was induced to  
24 do or not do by any of the Defendants in this  
25 case that lead to this claim?

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1 false representations, was caused to enter  
2 into the license agreement with SAP, correct?  
3 A. Correct.  
4 Q. Okay. Besides entering into the  
5 development agreement and the license  
6 agreement, what else was Hodell induced or  
7 caused to do, in your view, because of the  
8 misrepresentations that you have alleged?  
9 A. We invested in hardware for the  
10 infrastructure to support this software.  
11 Q. What else?  
12 A. We went through training,  
13 implementation costs.  
14 Q. You agree with me that each of  
15 the representations that you now claim are  
16 false were actually made to Hodell prior to  
17 Hodell signing the license agreement in  
18 December 2005, correct?  
19 A. Correct.  
20 Q. Paragraph -- pardon me, the  
21 second claim in your complaint is -- is styled  
22 as a cause of action for fraud. Begins on  
23 paragraph 66 of the complaint. Is this claim  
24 any different, in your view, from the first  
25 claim for fraudulent inducement?



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1 MR. LAMBERT: Objection.  
2 THE WITNESS: In the one case, the  
3 claim under 64 is the Defendants knew they had  
4 no intention or ability to perform. And in  
5 this case, it's -- they had the knowledge or  
6 utter disregard or recklessness or falsity.  
7 BY MR. STAR:  
8 Q. In the second cause of action for  
9 fraud, you agree with me that the allegations  
10 all relate to representations that were made  
11 to Hodell prior to December 23rd, 2005, right?  
12 A. Correct.  
13 Q. So both the first claim for  
14 fraudulent inducement and the second claim for  
15 fraud are based on allegation -- based on  
16 representations made to Hodell prior to  
17 signing the license agreement, correct?  
18 A. Correct.  
19 Q. If you refer, please, to the  
20 license agreement, which is Exhibit G to the  
21 amended complaint.  
22 A. (Doing as indicated.)  
23 Q. If you'll flip to the signature  
24 page, page 4 of the license agreement.  
25 A. (Doing as indicated.)

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1 Q. You see paragraph 11.9 headed  
2 Entire Agreement? Do you see that paragraph,  
3 sir?  
4 A. Oh, yes.  
5 Q. Okay. That's a paragraph that  
6 was in the agreement when it was signed?  
7 A. Correct.  
8 Q. Okay. And that would have been a  
9 paragraph that you would have read before your  
10 son signed this agreement in December of 2005,  
11 correct?  
12 A. Correct.  
13 Q. Okay. And you agree that it  
14 provides that this agreement, referring to the  
15 license agreement, and each schedule and  
16 appendix hereto constitute the complete and  
17 exclusive statement of the agreement between  
18 SAP and licensee, which was Hodell, and all  
19 previous representations, discussions and  
20 writings are merged in, and superseded by,  
21 this agreement? You see that, right?  
22 A. I see that, yes.  
23 Q. Did you have any particular  
24 understanding of what that meant at the time  
25 your son signed this agreement in

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1 December 2005?  
2 MR. LAMBERT: Objection. Also with the  
3 qualification this is not on behalf of -- his  
4 testimony is not on behalf of the company.  
5 You can answer.  
6 THE WITNESS: It is my impression at  
7 this point, we're at a point of no return, and  
8 this is SAP's way of getting it, shunting off  
9 liability.  
10 BY MR. STAR:  
11 Q. So why would you sign the  
12 document, if you believe SAP was shunting off  
13 liability?  
14 MR. LAMBERT: Objection.  
15 THE WITNESS: I'm asking -- answering  
16 as an individual.  
17 BY MR. STAR:  
18 Q. Fine.  
19 A. We were between a rock and a hard  
20 place.  
21 Q. As of December 23rd, 2005?  
22 A. Correct.  
23 Q. Is it your testimony then -- well  
24 -- well, what do you mean exactly you were  
25 between a rock and a hard place in December of

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1 2005? What does that mean?  
2 A. We had committed to this product,  
3 we had been assured it would handle 300 users,  
4 it would provide productivity improvements and  
5 integration into a Windows environment, we  
6 would have an add, several add-ons, which  
7 would be at that point state of the art for  
8 our industry.  
9 Q. Anything else?  
10 A. Spend time, evaluation, training.  
11 Q. And I'm not sure I completely  
12 understand your testimony. You believe that  
13 as of December 2005, Hodell was in between a  
14 rock and a hard place. Are you saying you  
15 were somehow forced to sign this license  
16 agreement?  
17 MR. LAMBERT: Objection.  
18 THE WITNESS: I'll let Kevin address  
19 the signing issue.  
20 BY MR. STAR:  
21 Q. Okay. Well, you testified  
22 earlier that you reviewed this document.  
23 A. Yes, I did.  
24 Q. And that he signed with your  
25 approval, correct? He wouldn't have signed

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1 the document if he thought he shouldn't have,  
2 right?  
3 A. Right.  
4 Q. Okay. I'm trying to find out  
5 from you what the Hodell state of mind was at  
6 the time --  
7 A. We agonized --  
8 Q. -- you signed this document?  
9 A. -- over it. That's the best I  
10 can say.  
11 Q. What do you mean agonized over  
12 it?  
13 MR. LAMBERT: Again, if you're asking  
14 what the Hodell state of mind is at the time  
15 this document was executed, that's the  
16 belief --  
17 MR. STAR: Fine. He can testify in his  
18 individual capacity.  
19 BY MR. STAR:  
20 Q. What -- what do you mean you  
21 agonized over it? You mean you agonized over  
22 signing this license agreement?  
23 A. Yes.  
24 Q. Why?  
25 A. Because of the burden it would

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1 put on us if this failed.  
2 Q. Okay. What burden did you think  
3 would be put on you if it failed?  
4 A. For the 40 licenses that we had  
5 to add in order to -- in order to get those,  
6 we signed this, we would have no protection.  
7 Q. Where in this document does it  
8 say anything about 40 licenses in this license  
9 agreement, sir?  
10 A. It doesn't, sir. We have an  
11 earlier agreement where we purchased 80  
12 licenses.  
13 Q. And you're referring to the  
14 development agreement, right?  
15 A. I'm referring to our purchase  
16 order and the invoice for the 80 licenses.  
17 Q. Are you aware that the court in  
18 this case has already held as a matter of law  
19 that neither SAP America, nor SAP AG, was  
20 actually a party to the development agreement  
21 or your purchase order; you aware of that?  
22 MR. LAMBERT: Objection.  
23 THE WITNESS: Yes.  
24 BY MR. STAR:  
25 Q. You're also aware that the court

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1 in this case has already held as a matter of  
2 law that SAP AG was not a party to the license  
3 agreement signed on December 23rd, 2005,  
4 correct?  
5 MR. LAMBERT: Objection.  
6 THE WITNESS: Yep.  
7 BY MR. STAR:  
8 Q. Okay. So you're aware that the  
9 court in this case has already concluded that  
10 the only contract, written contract, between  
11 an SAP Defendant and Hodell is the license  
12 agreement which is between Hodell and SAP  
13 America, correct?  
14 A. Correct.  
15 Q. Okay. And you're also aware that  
16 the only way in which Hodell was given the  
17 right to use any SAP software, was by signing  
18 this license agreement with SAP directly,  
19 correct?  
20 MR. LAMBERT: Objection.  
21 BY MR. STAR:  
22 Q. You can answer the question.  
23 A. Repeat that -- repeat the  
24 question.  
25 MR. LAMBERT: If it's the same

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1 question, this is Otto testifying --  
2 MR. STAR: Fine.  
3 MR. LAMBERT: -- individually.  
4 MR. STAR: That's fine.  
5 BY MR. STAR:  
6 Q. Sir, you -- you're personally  
7 aware that the only way in which Hodell had  
8 any right at all to use any -- any SAP  
9 software was by signing this license agreement  
10 with SAP America, correct?  
11 MR. LAMBERT: Objection.  
12 THE WITNESS: I'm not an attorney, but  
13 I suspect that answer -- that is correct.  
14 BY MR. STAR:  
15 Q. Okay. In December of 2005, did  
16 Hodell have legal representation? Was there  
17 an attorney that you used regularly?  
18 A. Please repeat that question.  
19 Q. In December of 2005, did Hodell  
20 have legal representation?  
21 A. On whether we signed this  
22 contract or not?  
23 Q. No, in general.  
24 A. Yes, we did.  
25 Q. Who was your attorney in December

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<p>1 of 2005?</p> <p>2 A. Eugene Kratus of Spieth, Bell.</p> <p>3 Q. Okay. For how long have you been</p> <p>4 dealing with Mr. Kratus?</p> <p>5 A. Approximately 20 years.</p> <p>6 Q. Okay. Did you, or anybody else</p> <p>7 on behalf of Hodell, enlist Mr. Kratus'</p> <p>8 services in reviewing the license agreement</p> <p>9 before you signed it, before your son signed</p> <p>10 it?</p> <p>11 A. No.</p> <p>12 Q. Did you go to any other attorney</p> <p>13 to review the license agreement before your</p> <p>14 son signed it on December 23rd, 2005?</p> <p>15 A. Not that I recollect.</p> <p>16 Q. Okay. What sort of services did</p> <p>17 Mr. Kratus provide to Hodell, legal services,</p> <p>18 did he provide to Hodell prior to December of</p> <p>19 2005?</p> <p>20 MR. LAMBERT: Objection, outside the</p> <p>21 scope, relevance.</p> <p>22 THE WITNESS: Do I have to answer that?</p> <p>23 MR. LAMBERT: If you can answer in a</p> <p>24 general sense that doesn't invade any</p> <p>25 privileged communications, just go ahead and</p>	<p>1 MR. LAMBERT: I'm going to object and</p> <p>2 instruct you not to answer, to the extent that</p> <p>3 your answer would invade any attorney-client</p> <p>4 privileged communications.</p> <p>5 BY MR. STAR:</p> <p>6 Q. You can answer.</p> <p>7 A. Pardon?</p> <p>8 Q. You can answer.</p> <p>9 A. I thought I heard --</p> <p>10 Q. Well, he instructed you not to</p> <p>11 disclose attorney-client communication.</p> <p>12 MR. LAMBERT: If you can answer that</p> <p>13 question without invading or disclosing</p> <p>14 attorney-client communications, then you can</p> <p>15 answer it.</p> <p>16 THE WITNESS: I would like the -- to</p> <p>17 say something off the record. I have to. To</p> <p>18 a businessman, this is --</p> <p>19 MR. LAMBERT: Well, are we on the</p> <p>20 record?</p> <p>21 MR. STAR: We're on the record. Anything</p> <p>22 you say will be on the record.</p> <p>23 MR. LAMBERT: Okay.</p> <p>24 BY MR. STAR:</p> <p>25 Q. Did you -- did you contact</p>
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<p>1 answer it.</p> <p>2 THE WITNESS: We used him for</p> <p>3 acquisition, contracts, asset purchase</p> <p>4 agreements. We use his firm if we had human</p> <p>5 relations type of issues.</p> <p>6 BY MR. STAR:</p> <p>7 Q. Okay. Mr. Kratus is a</p> <p>8 transactional-type lawyer, use him for --</p> <p>9 A. I don't know that term.</p> <p>10 Q. Okay. Well, you used him for</p> <p>11 the, or his services, and his firm's services,</p> <p>12 in acquiring some of these different office</p> <p>13 locations, or warehouse locations that you</p> <p>14 described before; is that right?</p> <p>15 A. Acquisition candidates, not</p> <p>16 necessarily warehouses.</p> <p>17 Q. Did you use him to draft any</p> <p>18 agreements that Hodell eventually entered</p> <p>19 into?</p> <p>20 A. Yes, the asset purchase</p> <p>21 agreements.</p> <p>22 Q. What was the reason that you</p> <p>23 didn't go to Mr. Kratus, or to his firm, to</p> <p>24 have him review the software license agreement</p> <p>25 before you signed it in December of 2005?</p>	<p>1 Mr. Kratus, or anybody in his firm, prior to</p> <p>2 signing the license agreement in</p> <p>3 December 2005, to discuss any of the terms in</p> <p>4 the license agreement?</p> <p>5 MR. LAMBERT: I'm going to object.</p> <p>6 MR. STAR: I'm not asking him for the</p> <p>7 actual communications. I'm trying to find out</p> <p>8 if he went to speak with a lawyer on behalf of</p> <p>9 Hodell to have him --</p> <p>10 MR. LAMBERT: He already said he</p> <p>11 didn't.</p> <p>12 MR. STAR: -- review the document.</p> <p>13 MR. LAMBERT: I think he already said</p> <p>14 he didn't.</p> <p>15 THE WITNESS: Yeah. To my</p> <p>16 recollection, we did not.</p> <p>17 BY MR. STAR:</p> <p>18 Q. Okay. Why not?</p> <p>19 A. Because --</p> <p>20 MR. LAMBERT: Again, same objection to</p> <p>21 the extent that your answer --</p> <p>22 MR. STAR: It can't call for</p> <p>23 attorney-client privilege. If he didn't have</p> <p>24 a communication with his lawyer, it</p> <p>25 necessarily cannot call for privileged</p>



<p style="text-align: right;">Page 229</p> <p>1 information. I mean, he didn't -- he's 2 testified he didn't go to the lawyer that he 3 had for 20 years, and I'm asking -- and yet he 4 agonized over this document, and I'm asking 5 him why he didn't go to his lawyer. 6 MR. LAMBERT: Again, first of all, Otto 7 isn't the one that signed this document. 8 Kevin is. If you want to ask Kevin, that's 9 fine. 10 MR. STAR: Well, I will also ask Kevin 11 the question, and -- but Otto has testified 12 here today that he reviewed this document in 13 detail, and that his son would not have signed 14 this document if he didn't approve it, and 15 that they agonized over the document. 16 BY MR. STAR: 17 Q. Sir, given your testimony that 18 you reviewed this document before it was 19 signed by your son, that you agonized over the 20 document, and you had some concerns, why 21 didn't you go to Mr. Kratus or somebody else 22 in his firm to review it? 23 A. Two reasons. Number one, we both 24 speak English, we can read, and we were 25 dealing with a worldwide organization that, in</p>	<p style="text-align: right;">Page 231</p> <p>1 BY MR. STAR: 2 Q. Okay. But you're aware that the 3 court dismissed any claim against SAP America 4 or SAP AG that it had breached the development 5 agreement, correct? 6 A. Correct. 7 Q. And you're aware that the court 8 dismissed any claim against SAP AG that it 9 breached the license agreement, correct? 10 A. I don't recall. 11 Q. Paragraph 84 of the complaint 12 states that in the event Hodell-Natco should 13 be deemed bound to the terms of the SAP 14 Business One software license agreement for 15 the 2005 purchase of 40 CMR -- pardon me -- 16 CRM user license -- licenses -- the Plaintiff 17 alleges that the warranty set forth in 18 paragraph 7.1 was breached, as the software 19 did not substantially conform to the 20 functional specifications contained in the 21 documentation. 22 What specifically does Hodell contend 23 about the SAP Business One software that it did 24 not substantially conform to the functional 25 specifications contained in the documentation?</p>
<p style="text-align: right;">Page 230</p> <p>1 our view, could be trusted at the time. 2 Q. Okay. Is that it? 3 A. Yeah. 4 Q. Okay. So you understood what you 5 were signing then? It was in plain English, 6 as you say, right? 7 A. (Witness nods head.) Yes. 8 Q. Okay. Including paragraph 11.9, 9 which says that this is the entire agreement, 10 and that all previous representations, 11 discussions and writings are merged in and 12 superseded by this agreement, correct? 13 A. I already answered that question. 14 Q. Okay. We'll let you stand by 15 your prior answer. 16 Your third cause of action here, sir, is 17 for breach of contract. And in the complaint, you 18 allege that SAP had breached both the development 19 agreement and the license agreement. As we've 20 already established, the only remaining claim 21 against SAP for breach of contract is a claim that 22 SAP America breached a warranty obligation in the 23 license agreement. You understand that? 24 MR. LAMBERT: Objection. 25 THE WITNESS: I'm not an attorney.</p>	<p style="text-align: right;">Page 232</p> <p>1 MR. LAMBERT: Again, that's going to be 2 Kevin's area of testimony. 3 BY MR. STAR: 4 Q. Okay. Do you have any 5 understanding in your individual capacity as 6 to what is -- what you mean by the 7 "documentation" referenced in paragraph 84 of 8 the complaint? 9 A. Among various documents, the 10 elements that talked about productivity 11 improvement, efficiencies, reduction of 12 cost -- 13 Q. Okay. 14 A. -- speed of access to data. 15 Q. If you look at the license 16 agreement for me, sir, again, Exhibit G. 17 Exhibit G, sir. Paragraph 1.2 is titled 18 Documentation. It says it means SAP's 19 documentation, which is delivered to licensee, 20 which is Hodell, under this agreement. Do you 21 see that? 22 A. Yes. 23 Q. Okay. Are you on paragraph 1.2, 24 sir? 25 A. 7.1.</p>

<p style="text-align: right;">Page 233</p> <p>1 Q. No -- I'm sorry. I'm looking at 2 paragraph 1.2 on the first page of the license 3 agreement. 4 A. Oh, I'm sorry. I thought you 5 said 7.1. 6 Q. Just want to make sure we don't 7 have any confusion there. 8 Just to do that again, you see in 9 paragraph 1.2, it says Documentation, right? 10 It says it means SAP's documentation, which is 11 delivered to licensee, being Hodell, under 12 this agreement, correct? 13 A. Correct. 14 Q. Okay. Do you have that 15 documentation? 16 A. I would have to defer to Kevin. 17 Q. Okay. Do you know if that 18 documentation's actually been produced in this 19 litigation? 20 MR. LAMBERT: Objection. 21 THE WITNESS: I would have to defer to 22 Kevin. 23 BY MR. STAR: 24 Q. Okay. Do you recall personally 25 ever reading the documentation?</p>	<p style="text-align: right;">Page 235</p> <p>1 understanding, as the designee on behalf of 2 Hodell, that the alleged misrepresentations 3 that support your fifth cause of action for 4 negligent misrepresentation, are the same 5 alleged misrepresentations that form the basis 6 of your claims for fraud and fraudulent 7 inducement? 8 MR. LAMBERT: Objection, same. 9 THE WITNESS: Sorry, I didn't hear what 10 you said. 11 MR. LAMBERT: I was just objecting. 12 You can answer, if you know. 13 THE WITNESS: I believe so. 14 BY MR. STAR: 15 Q. Okay. And you'd also agree with 16 me that all of the misrepresentations that 17 form the basis of your negligent 18 misrepresentation claim were representations 19 made to Hodell prior to its signing of the 20 license agreement on December 23rd, 2005, 21 right? 22 MR. LAMBERT: Objection. 23 THE WITNESS: I believe that's correct. 24 BY MR. STAR: 25 Q. Okay. At the time Hodell signed</p>
<p style="text-align: right;">Page 234</p> <p>1 MR. LAMBERT: Objection. 2 THE WITNESS: I don't know. 3 BY MR. STAR: 4 Q. So you don't know if the 5 documentation may have representations about 6 productivity gains and those sorts of things 7 that you have described, correct? 8 MR. LAMBERT: I just want to note an 9 objection. 10 THE WITNESS: I don't know. 11 BY MR. STAR: 12 Q. The fifth cause of action in your 13 complaint is for negligent misrepresentation. 14 It begins with paragraph 91. Is it correct 15 that the representations, or 16 misrepresentations that form the basis of this 17 cause of action for negligent 18 misrepresentation, are the same 19 representations that support your claims for 20 fraudulent inducement and fraud? 21 MR. LAMBERT: Objection. 22 THE WITNESS: Please rephrase that 23 question. 24 BY MR. STAR: 25 Q. Sure. Okay. Is it your</p>	<p style="text-align: right;">Page 236</p> <p>1 the license agreement in 2005, was it your 2 personal belief that you had any sort of 3 special relationship with SAP, either SAP 4 America, or SAP AG, or did you feel that you 5 were just dealing with them as a business 6 customer, or -- not the right word -- let me 7 ask the question again. 8 At the time that you signed the license 9 agreement in December of 2005, did Hodell 10 believe that it had any special relationship 11 with SAP America, or SAP AG, such that it was 12 in a position of trust or confidence with SAP? 13 MR. LAMBERT: Objection. 14 THE WITNESS: I don't believe it was a 15 special relationship. I believe a company of 16 SAP's stature requires an up and up 17 relationship with all their clients. 18 BY MR. STAR: 19 Q. So you'd agree that when you 20 signed the license agreement, you had nothing 21 more than a business to business, or arm's 22 length relationship between Hodell and SAP, 23 correct? 24 A. Correct. 25 Q. Let's go off the record for a</p>



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1 Q. Okay. So as of this time,  
2 October 14th, 2004, what was your expected  
3 timeline for the completion of the In-Flight  
4 add-on and the Radio Beacon applications?  
5 A. I don't recall what my original  
6 expectation was.  
7 Q. I'm asking you as of the -- as of  
8 October 14th of 2004, did you have an  
9 expectation?  
10 A. Yes.  
11 Q. What was it?  
12 A. But I don't have that memorized.  
13 MR. STAR: This is the next document,  
14 please. 10.  
15 (Whereupon, Exhibit 10 was marked for  
16 identification.)  
17 BY MR. STAR:  
18 Q. Sir, we have marked here as  
19 Exhibit 10 an email produced by Hodell, which  
20 is dated November 1, 2004 from Dan Lowery to  
21 yourself and your son. Do you see that?  
22 A. Yes.  
23 Q. Okay. There is notes,  
24 handwritten notes at the bottom. Are those  
25 your notes, sir?

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1 A. Yes.  
2 Q. You have written here the  
3 In-Flight "pass" was IBiS's restitution for  
4 our implementation penalty of Radio Beacon, in  
5 conjunction with pass on Radio Beacon. What  
6 -- what did you mean by that?  
7 A. The number of In-Flight licenses  
8 would be provided at no cost to us.  
9 Q. Why?  
10 A. Because of the time required to  
11 implement Radio Beacon on FACTS.  
12 Q. You say here, you use the word  
13 restitution, IBiS's restitution. What did you  
14 mean exactly?  
15 A. That was their help to us for the  
16 financial cost to us on that implementation.  
17 Q. Going into -- strike that. As of  
18 November 1st of 2004, was it Hodell's view  
19 that it was owed restitution from IBiS  
20 concerning the FACTS implementation?  
21 A. I think there was a general  
22 understanding that it cost us more than was  
23 anticipated.  
24 Q. How much more?  
25 A. I can't recall.

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1 Q. What did Hodell believe as of  
2 November 1st, 2004 would have been fair  
3 restitution for the FACTS implementation?  
4 MR. LAMBERT: Objection.  
5 THE WITNESS: I don't recall.  
6 BY MR. STAR:  
7 Q. What was wrong with the FACTS  
8 implementation that you thought you were  
9 entitled to restitution from IBiS?  
10 A. It was not a FACTS  
11 implementation. It was a Radio Beacon add-on  
12 to the FACTS software.  
13 Q. Okay. What was wrong with the  
14 Radio Beacon add-on to the FACTS software --  
15 A. The time it took to --  
16 Q. -- that you thought you needed  
17 restitution or deserved restitution from IBiS?  
18 A. In essence, we helped upgrade the  
19 Radio Beacon package, because of the -- the  
20 time it took to implement for our industry.  
21 Q. Is that it? That's the only  
22 reason you thought you were entitled to  
23 restitution?  
24 MR. LAMBERT: Objection.  
25 THE WITNESS: I don't recall.

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1 BY MR. STAR:  
2 Q. You agree with me that if you in  
3 general had the belief that you were entitled  
4 to restitution from a company with whom you  
5 did business, there would be some specific  
6 reason why you thought you were owed some  
7 money from them, right?  
8 A. It took longer than we originally  
9 anticipated to get it functional.  
10 Q. Did it ever get functional?  
11 A. Yes.  
12 Q. Okay. And you believe the -- the  
13 delay in having the Radio Beacon add-on for  
14 FACTS functional warranted restitution for  
15 Hodell, right?  
16 A. Some recovery of the costs for  
17 implementation and helping them develop a  
18 package.  
19 Q. Helping Radio Beacon develop a  
20 package?  
21 A. Yes.  
22 Q. Okay.  
23 A. And the synchronization with  
24 IBiS.  
25 Q. Did you ever address this issue

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1 directly with -- with Radio Beacon and ask  
2 them for restitution or any monies for the  
3 delayed implementation?  
4 A. I don't recall.  
5 Q. Did you ever -- ever initiate any  
6 legal proceedings against Radio Beacon in  
7 connection with this alleged delay concerning  
8 the FACTS software?  
9 A. No.  
10 MR. STAR: Mark this as 11, please.  
11 (Whereupon, Exhibit 11 was marked for  
12 identification.)  
13 BY MR. STAR:  
14 Q. Sir, we've marked here as  
15 Exhibit 11 is an undated document that was  
16 produced by Hodell. Do you -- do you recall  
17 seeing this document sometime in 2004?  
18 A. Yes.  
19 Q. Okay. When do you think you saw  
20 this in 2004? Was it before you signed the  
21 license -- before you signed the development  
22 agreement in December of that year?  
23 A. It was prior to the signing.  
24 Q. Okay. Underneath the heading  
25 Costs in the middle of the page, it shows the

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1 purchase of In-Flight Enterprise. Below that  
2 it says 3,816 hours, then it says no charge.  
3 Why was there no charge for the purchase of  
4 In-Flight? Is this what you were referring to  
5 earlier that this was going to be restitution?  
6 A. Correct.  
7 Q. Okay. Did you have some  
8 understanding of what dollar figure that  
9 equated to that -- that you would be obtaining  
10 restitution for?  
11 A. No specific dollar amount was  
12 discussed.  
13 Q. Okay. You see that it lists the  
14 purchase of In-Flight and relates that as to  
15 number of hours, and below that, it has a per  
16 hour charge for different development and  
17 implementation items, and it shows \$150 an  
18 hour. Was it your understanding that the  
19 amount that -- that you would be receiving for  
20 restitution was the equivalent of \$150 an hour  
21 times 3,816 hours?  
22 A. I can't say that for certain,  
23 because I don't know if the same individuals  
24 would be involved now.  
25 Q. I'm not sure I understand your

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1 response. What was your understanding, if you  
2 can recall, as to the amount of restitution  
3 Hodell would be receiving in connection with  
4 the Radio Beacon-FACTS issue?  
5 MR. LAMBERT: Objection.  
6 THE WITNESS: The free In-Flight  
7 licenses.  
8 BY MR. STAR:  
9 Q. Okay. And how much was that  
10 worth?  
11 A. I didn't put a number on it.  
12 Q. Had you done any calculation in  
13 or around October of 2004, as to what you  
14 thought in terms of dollars Hodell was  
15 entitled to in terms of restitution concerning  
16 the Radio Beacon and FACTS issue?  
17 A. It was my impression that this,  
18 plus the royalty, would be sufficient.  
19 Q. By the royalty, what do you mean?  
20 A. We talked about the development  
21 agreement yesterday. In that, was spelled out  
22 up to \$100,000 of funds credited to our  
23 invoices due for user sales above the 500  
24 number.  
25 Q. Well, do you agree with me that a

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1 proper interpretation of the costs associated  
2 with the purchase of In-Flight would be to  
3 take the 3,816 hours and multiply it by \$150  
4 per hour, which would come out to a figure of  
5 \$572,400?  
6 MR. LAMBERT: Objection.  
7 THE WITNESS: I can't jump to that  
8 conclusion.  
9 BY MR. STAR:  
10 Q. Because you just had no  
11 understanding of how much this was worth at  
12 all; is that right?  
13 A. I had some general understanding  
14 of the caliber of the people that were working  
15 on it. I don't know what the net charge would  
16 be for those.  
17 Q. So you would not agree with the  
18 statement that Hodell, in effect, expected to  
19 receive total restitution of somewhere around  
20 \$672,000, which would include \$572,000 related  
21 to the no charge for the In-Flight licensing,  
22 plus \$100,000 back as you have described?  
23 A. That is your conclusion.  
24 Q. You don't agree with it?  
25 A. I don't have any direct basis.

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1 Q. And your -- your testimony today  
2 is that you just have no understanding of the  
3 exact amount of restitution Hodell was going  
4 to receive for the problems that it had  
5 incurred with respect to the Radio Beacon  
6 add-on for FACTS; is that right?  
7 MR. LAMBERT: Objection.  
8 THE WITNESS: That's your summary --  
9 BY MR. STAR:  
10 Q. Okay. Well --  
11 A. -- not mine.  
12 Q. -- if you have an understanding,  
13 sir, I'm entitled to know what it was. If I  
14 just haven't asked the question in a way that  
15 hits the -- the nail right on the head, I'm  
16 still entitled for you to tell me what your  
17 understanding was of the total amount of  
18 restitution Hodell would be receiving with  
19 respect to the -- the problems that it  
20 experienced with the Radio Beacon add-on for  
21 FACTS. Would you please tell me that?  
22 A. It's my understanding, based on  
23 the development agreement work, that at some  
24 point they may be licensing In-Flight. I  
25 don't know specifically what they were going

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1 to charge for it, but it probably could put a  
2 value in -- well in excess of 100,000 on that  
3 portion alone in licensing fees.  
4 Q. So it was at least in excess of  
5 \$100,000 that you would be obtaining in  
6 benefits by not having to pay for the  
7 In-Flight licenses; is that true?  
8 A. Plus the royalties.  
9 Q. Plus another \$100,000 in  
10 royalties?  
11 A. Plus, yes.  
12 Q. So at least \$200,000?  
13 A. Yes, above that.  
14 Q. How far above that?  
15 A. I wouldn't be able to say.  
16 MR. STAR: This is 12, please.  
17 (Whereupon, Exhibit 12 was marked for  
18 identification.)  
19 BY MR. STAR:  
20 Q. Sir, what we have marked as  
21 Exhibit 12, is this also another page of your  
22 handwritten notes?  
23 A. I'm sorry, could you repeat that?  
24 Q. Is this also a page of your  
25 handwritten notes, Exhibit 12?

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1 A. Correct.  
2 Q. Okay. It's dated October 31,  
3 2005, correct?  
4 A. Correct.  
5 Q. It indicates at the top, SAP Web  
6 Demo. What were you referring to?  
7 A. I can't say.  
8 Q. At the bottom of your note here,  
9 you write, some little concern of server size  
10 for sequel database greater than the 120,000  
11 SKUs. Do you see that?  
12 A. Yes.  
13 Q. What were you referring to there?  
14 A. There are two sentences there.  
15 Which one are you asking me a question on?  
16 Q. Well, I was asking you a question  
17 on the one that I read to you.  
18 A. Could you please --  
19 Q. Sure.  
20 A. -- read it again?  
21 Q. You wrote, some little concern of  
22 server size for sequel database greater than  
23 120,000 SKUs. What were you referring to?  
24 A. My recollection at this point is  
25 that referred to, since at this time we were

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1 dealing with LSi, IBiS, SAP business partner,  
2 this pertained to a comment that either Dale,  
3 or someone from LSi, IBiS made on our number  
4 of SKUs and that -- effect that might have on  
5 the sizing of the sequel server.  
6 Q. Did this in any way relate to  
7 concerns as to whether Business One itself  
8 could handle a customer that had greater than  
9 120,000 SKUs?  
10 A. Not to me.  
11 Q. Did -- now reviewing this  
12 document, does it refresh your recollection as  
13 to whether you were actually given a web demo  
14 of the SAP Business One software back in  
15 October of 2005?  
16 A. That is the implication of this  
17 memo.  
18 Q. Okay. What do you recall about  
19 that demo? How was it done, and who did it?  
20 A. As I pointed out, at this time,  
21 we were dealing with LSi, IBiS, the SAP  
22 business partner, so it would have been done  
23 by them.  
24 Q. Okay. Do you recall if they came  
25 to your location to do it, or did you view it